

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, September 18, 2002, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Steve Duvall, Gerry Krieser, Roger Larson, Patte Newman, Greg Schwinn, Cecil Steward, Mary Bills-Strand and Tommy Taylor; Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Becky Horner, Duncan Ross, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held September 4, 2002. Larson moved to approve the minutes, seconded by Carlson and carried 9-0: Carlson, Duvall, Krieser, Larson, Newman, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'.

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION**

##### **BEFORE PLANNING COMMISSION:**

September 18, 2002

Members present: Carlson, Duvall, Krieser, Larson, Newman, Schwinn, Steward, Bills-Strand and Taylor.

The Consent Agenda consisted of the following items: **SPECIAL PERMIT NO. 1986 and STREET AND ALLEY VACATION NO. 02010.**

**Item No. 1.1, Special Permit No. 1986**, was removed from the Consent Agenda and scheduled for separate public hearing.

Bills-Strand moved to approve the remaining Consent Agenda, seconded by Steward and carried 9-0: Carlson, Duvall, Krieser, Larson, Newman, Schwinn, Steward, Bills-Strand and Taylor voting 'yes'.

**SPECIAL PERMIT NO. 1986**  
**FOR A PARKING LOT IN A RESIDENTIAL ZONING DISTRICT**  
**ON PROPERTY GENERALLY LOCATED AT**  
**SOUTH 27<sup>TH</sup> STREET AND VINE STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 18, 2002

Members present: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn.

Staff recommendation: Conditional approval.

This application was removed from the Consent Agenda and had separate public hearing.

Duncan Ross of Planning staff submitted a letter in opposition from the Hartley Neighborhood Association.

Proponents

**1. J.D. Burt of Design Associates**, 1609 N Street, presented the application, the purpose of which is limited to a special permit for a parking lot on a vacant lot at the southwest corner of 28<sup>th</sup> and Vine Street. The property is owned by TJK Investments (Cycle Works and Moose's Tooth). They have a real interest in the redevelopment of No. 27<sup>th</sup> Street. They are completing a project at 27<sup>th</sup> & "S" along the west side of the street and are showing a real dedication to the neighborhood. This will repave a portion of a vacant lot with the termination of the lease for the existing property at some point in the future. The tenants of the residence wish to stay and the applicant wants to retain the residence for them but wants approval to construct a parking lot over the entire area at some point in the future.

Burt agreed with the staff report analysis and conditions of approval. The purpose of this parking lot is to provide additional parking for the existing businesses. This particular zoning district requires 1 parking stall per 600 sq. ft. versus 1 per 300 sq. ft. and 1 per 200 sq. ft. in other districts. At this location, there is a need to provide additional parking for customers to avoid parking on the adjacent streets. This special permit would add 4 stalls in phase one, and a total of 11 stalls at some point in the future.

With regard to the letter from the Hartley Neighborhood Association, Burt stated that the applicant is a good neighbor and committed to the area. This applicant should not be judged by one of the neighbors that chooses to have cars parked all over and maintains an unsightly lot.

Carlson inquired whether the applicant met with the neighborhood association. Burt did not. He knows that the applicant did make several attempts to contact the neighbors down the alley. This particular lot is already vacant and this is an attempt to comply with city ordinances that require a permit to park there. It is currently gravel and people are using it for parking.

Steward wondered whether the applicant investigated other parking south on 27<sup>th</sup> Street. Burt is not sure that this applicant owns any property to the south.

**2. Chris Sonderup**, owner of the property, indicated that there is no additional parking along there. They currently utilize the small spots that are available and they are currently one spot in excess of the limit. There are one or two vacant lots further to the south that he is looking at for down the road, but at this point there are no other additional spots.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** September 18, 2002

Bills-Strand moved to approve the staff recommendation of conditional approval, seconded by Duvall.

Newman believes this decision is difficult. She will vote with the neighborhood association, although she is not sure there is a solution. It would have been nice if the applicant would have met with the neighborhood association ahead of time.

Steward will vote in opposition. 28<sup>th</sup> Street is an entrance to a residential area. There are houses immediately behind this property that front on Vine Street that are residential, so the commercial in this particular intersection is strictly the frontage on 27<sup>th</sup> Street. There are properties (as the owner mentioned) further south and he would encourage sticking to the commercial aspect of 27<sup>th</sup> Street.

Motion for conditional approval carried 5-4: Duvall, Krieser, Bills-Strand, Taylor and Schwinn voting 'yes'; Steward, Larson, Carlson and Newman voting 'no'.

**COUNTY CHANGE OF ZONE NO. 209**  
**FROM AG AGRICULTURAL TO**  
**AGR AGRICULTURAL RESIDENTIAL**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 12<sup>TH</sup> STREET (HIGHWAY 77) AND**  
**WEST SPRAGUE ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 18, 2002

Members present: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn.

Staff recommendation: Deferral. Denial if action is requested.

Proponents

1. **Lyle Loth of ESP** testified on behalf of **Yankee L.L.C.**, the owner. After reviewing the staff report, it is apparent that the unknown aspects of potable water available and road access would preclude the possibility of a favorable vote for this change of zone. On that basis, the applicant would concur with the staff recommendation of deferral until a review performance standard is adopted by the county for acreage development. However, if this applicant can satisfactorily address the two issues, they would like the ability to pull this item off of the pending list prior to the adoption of those performance standards and ask for a Commission vote at that time.

Bills-Strand inquired of staff as to the timetable for development of the performance standards, etc. Mike DeKalb of Planning staff recalled that the Comprehensive Plan asked for those to be done in a year or two. It is one of the priority items on the Planning Department agenda, but he did not have a specific timeline.

Carlson made a motion to place this application on pending, seconded by Krieser and carried: 9-0: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn voting 'yes'.

There was no other public testimony.

**CHANGE OF ZONE NO. 3375**  
**FROM AGR AGRICULTURAL RESIDENTIAL AND**  
**R-1 RESIDENTIAL TO O-3 OFFICE PARK,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT HIGHWAY 2 AND OLD CHENEY ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 18, 2002

Members present: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn.

Staff recommendation: Deferral

Proponents

**1. Steve Miller of Olsson Associates** presented the application on behalf of **West Gate Bank**. The developer believes that this is a significant development opportunity in East Lincoln.

**2. Carl Sjulín**, President of **West Gate Bank**, testified in support. His family has owned West Gate Bank for the past 21 years and the bank has been fortunate to grow with the city. This application is for a change of zone and use permit at 60<sup>th</sup> and Old Cheney Road. This land has been undeveloped and represents a pie-shaped lot of approximately 7 acres bounded by Highway 2 and Old Cheney Road. West Gate Bank currently has six locations. This would be the seventh location and would serve as West Gate Bank's new main bank location. West Gate Bank is in significant need of additional space to meet the growing needs of Lincoln. Sjulín submitted an elevation rendering of the west view/front of the building, 250' x 80' in dimension equalling 60,000 gross sq. ft. on three levels. The net square footage is approximately 45,000 sq. ft. The exterior will be limestone and brick and will be designed in classic federal style, somewhat colonial in nature, and will complement Williamsburg Village. The architectural team is Davis Design, who have been working on the building design for the past 18 months. They are working now at a rapid pace in order to get a building permit this fall, with completion by the end of next year. West Gate Bank has entered into commitments with prospective tenants for January 2004 occupancy. There is a need to get as much work done this fall as possible in the event we have a bad winter. Time is very much of the essence.

Sjulín went on to explain that the project represents an 11 million dollar investment. The building will be complemented at the west end by a waterfall feature with extensive landscaping worth over \$500,000. The request to waive street trees along Highway 2 is only for a very narrow, small portion where there is an existing tree mass. They do not want to put street trees in the line of sight for motorists traveling east on Highway 2 to see the building. They will be adding trees to allow for 100% screening to the neighboring acreages. More than

12 trees have been removed and are being stored at Campbells nurseries to bring back onto the property.

With respect to the height waiver, Sjulín explained that the actual building height is within the 45' maximum allowed by city code. There is a 3' parapet wall. The cornice at the top of the front entrance will help screen the air conditioning equipment. The cupola will be a good visual impact from Highway 2. Extensive landscaping will be done and native grasses will allow for natural drainage.

Concerning the Wagon Lane vacation, Sjulín noted that there is a 60' x 60' section of Wagon Lane which is not presently built and which needs to be vacated. Sjulín suggested that if those properties are ever subdivided, the city would have an opportunity to put in a cul-de-sac that would not abut the bank's property.

Carlson inquired whether the cupola is designed such that cellular antennae could be hidden inside of it. Sjulín admitted that the thought had not crossed his mind. His answer would be no. When you walk into the atrium as you look upward, that will be open straight up to the cupola. The cupola is up to the front of the building. Carlson commented that it looks as though it may be one of the taller things in the area. Sjulín assured that it will have lighting protection.

Carlson asked the applicant to provide an elevation/view of the eastern approach— what is your landscaping for someone traveling into town from Highway 2 going west? Sjulín noted that the hill is quite high. You can't see the property until you are halfway along the property. A motorist would have a very good view of the water feature and the landscaping that will be done there. With the topography in that area, it is not possible to see the south end of the building.

Miller added that there is an existing tree mass of approximately 22-25 trees that would be preserved that will buffer the view of the actual bank building coming westbound on Highway 2. There would be ample buffering with street trees that will be retained at that site on the south side. They have not done a sight line analysis. The site has been found to be south of the Capitol View Corridor, but they have not done a topographic study in terms of the sight line or the view of that cupola. Miller showed photos to provide a feel for the amount of existing trees on the site. A vast majority of the existing trees will be retained, especially along the eastern border. A number of large trees have been removed from the site and will be replanted on the site once the building is in place.

There was no testimony in opposition.

Steward asked staff to provide the rationale for recommending deferral because of the Wagon Lane vacation. Brian Will of Planning staff informed the Commission that initially,

there were four issues involved with the recommendation for deferral. The staff did not have complete information relative to the justification for the waiver of street trees and the height exception. The Wagon Lane vacation was an additional issue and came before the Planning Commission back in January of this year. That issue is still unresolved. It is a requirement of the subdivision ordinance that a turnaround be provided. One concern was that the site plan potentially could change in a minor or significant way if the turnaround had to be provided on this property. It could possibly be dealt with in some other manner by the property owners to the east, but those property owners have not been involved in this discussion. If we don't deal with the turnaround issue on this property, the property owners to the east will be forced to deal with it later on.

Steward noted that there are acreage property owners involved.

Carlson inquired about the traffic analysis. Will acknowledged that the staff did meet with the applicant this morning. The street vacation was discussed as well as the request for waivers, the breakdown of land uses and the traffic impact study. He believes that they have come to an agreement on the traffic analysis, provided the applicant submits the land use breakdown that they have described.

Schwinn noted that there are no conditions of approval provided in the staff report. Will explained that this project has been evolving. At the time it was reviewed by the staff, there were four outstanding issues which the staff believed should be addressed before drafting the conditions of approval. Had there only been one issue, perhaps it could have been addressed with conditions of approval. The staff was not comfortable providing conditions, understanding that information might come forward that would change the recommendation. Will believes the applicant has put together some conditions since 10:00 this morning.

Miller stated that he did submit conditions of approval to the city staff. Those include revising the site plan to meet the conditions set forth in the staff analysis including a breakdown of the land uses, labeling the sidewalks, showing the walkway through the west parking lot, dealing with the sight distance triangles, etc. The applicant will show the existing street trees and justify the waiver requests. The landscape requirements require 10 additional street trees. Dozens of trees are being retained within the property that will be maintained and replanted on the site. The drainage plan will be revised to the satisfaction of Public Works. Miller concurred that they have not reached agreement with the staff on the Wagon Lane vacation. A waiver of that turnaround requirement has been requested with the administrative final plat. The applicant's proposed conditions of approval were submitted to the staff this morning and the applicant would request that these applications be voted upon and moved forward.

Schwinn indicated that he was not comfortable not having the conditions before the Commission. He wondered whether a two-week deferral would be a problem. Sjulín stated that they provided the staff with 27 copies of the proposed conditions and assumed the

Commission received copies. Time is of the essence with respect to this project. He believes Wagon Lane is a small technicality. The way Wagon Lane is shown is not the way it would be developed anyway. West Gate Bank really needs to move forward. The problem with two weeks is that it starts pushing into the holidays. Sjulín requested Commission action today. They have worked out everything other than Wagon Lane with the city. Everything else has been agreed upon. It is a road that is not built. If ever is built, it would not be built in that manner. 60' is plenty wide for a turnaround. There are only one or two lots that would be serviced at the end of that street anyway. We have had a number of meetings with staff over the years. We wanted to vent traffic out onto Wagon Lane, coming back out onto Old Cheney at 62<sup>nd</sup> Street, but the city planners did not believe that would be as good a development so the applicant scrapped that idea and is providing full internal circulation. That comes at some sacrifice to what we wanted with respect to the property. He does not want to get held up because of the Wagon Lane issue.

There was no testimony in opposition.

Steward moved to defer, with continued public hearing and administrative action scheduled for October 2, 2002, seconded by Newman.

Steward noted that the project has been in the works for a year and a half. If the season was a concern, maybe it should have started earlier. Steward believes that this is presumptuous of the two other property owners' circumstance, and it is also totally irregular that the Commission be asked to approve an action without conditions to consider. An hour before the meeting would not even have been enough time. Steward believes there is the need for a little more time and conversation to get the details worked out. It's a good project and it is appropriately located, in his opinion, but it's not the manner in which we do planning.

Carlson also believes it would be helpful to see the other elevations and approach lines, especially where the tower is concerned, to provide a sense of how it fits in with the rest of the area.

Schwinn will vote against the deferral. He does not want to set a precedent that if staff doesn't put in conditions they won't expect the Commission to act. He believes that conditions should have been provided for the Commission's consideration.

Motion to defer two weeks carried 5-4: Steward, Bills-Strand, Taylor, Carlson and Newman voting 'yes'; Duvall, Krieser, Larson and Schwinn voting 'no'.



**STREET VACATION NO. 02011**  
**TO VACATE THE NORTH 18' OF GLADE STREET**  
**FROM SO. 48<sup>TH</sup> STREET, EAST 124.2'.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 18, 2002

Members present: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn.

Staff recommendation: A finding of nonconformance with the Comprehensive Plan.

Proponents

**1. Ben and Stacy Hollingsworth**, 2250 So. 48<sup>th</sup>, the petitioners, testified in support. They would reduce the request from 18' to 16' if that would make any difference. The reason for this request is because the Hollingsworth's have two small children with no fence on the existing yard. In order to put a fence on the property line, it would leave the majority of the property outside the fence. There is 21' from the existing property line to the curb. It is a minor street, and being one block from a major thoroughfare, they saw no indication that there would be any future use for that 21', or at least a significant portion. They are willing to provide permanent easements for the utilities. They would propose constructing a fence that would not extend to the corner—it would only be even with the front edge of the main structure, which is 20' from the west property line and roughly 35' from the 48<sup>th</sup> Street curb. Thus it would not interfere with any of the visibility for that intersection. If the vacation is reduced to 16', there would be approximately 5' between the curb and the property line. They would even be willing to back that off closer to the house, if necessary, or if it would make a difference.

Steward inquired as to the depth of the rear yard. Hollingsworth indicated that from the house to the east property line it would be roughly 75'. There is also a detached garage and driveway, large tree and patio on the property. Steward is not clear why the petitioners cannot have a reasonable play yard within the context of the existing property line. Hollingsworth stated that it is due to the existing items in there. There is a patio that eats up a lot of the yard. The existing tree has a rather large footprint. The garage is not on the property line—it is quite a ways to the west. There is probably 20' between the patio and the paved section of the garage. With two or more children, that did not strike the Hollingsworth's as being a large amount of space in which to roam.

**2. Shirley Speer**, 8331 Elizabeth Drive, stated that she is not necessarily in opposition. She owns two rentals across the street from the Hollingsworths. Her concern is anything that would impede the visibility of Glade Street. In order to get into the rental properties coming from the south, it is necessary to use Glade Street and swing around there. It is the only way that her tenants can get into the property if they are coming from the south. As long as it leaves a good open intersection so that they can see, she would have no opposition.

**Staff questions**

Steward observed that this would end up in a potential sight line problem near the intersection of Glade and 48<sup>th</sup>. This was also a concern of Dennis Bartels of Public Works. The applicant indicated that the purpose for the vacation was to put up a fence and Public Works did investigate. There is 17' of paving centered in 60' of right-of-way, which is standard, and Public Works does not feel justified in recommending approval of a reduction of that standard width. It was paved as a standard residential street with 60' of right-of-way, which was the standard at the time and it is still the standard. If the vacation is approved, there is no sidewalk space or street trees or whatever else might go in there. The aerial photograph does not show a sidewalk on the north side.

**Response by the Applicant**

Stacy Hollingsworth stated that they would be willing to take the extra property and build the sidewalk closest to the house. There is not a sidewalk the entire four-block length of that street. The Hollingsworths have owned the property about four years.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

September 18, 2002

Steward moved to deny, seconded by Carlson.

Steward believes the staff assumption and observation is correct. This does not comply with the Comprehensive Plan. It seems the property owners knew what the dimensions were in the four years of the twenty years that the condition has existed. He believes there are enough other choices within the bounds of their property for safety for the children with a little creative landscape planning.

Motion to deny, finding that the proposed vacation is not in compliance with the Comprehensive Plan, carried 7-2: Steward, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn voting 'yes'; Duvall and Krieser voting 'no'.

**WAIVER OF DESIGN STANDARDS NO. 02017**  
**TO WAIVE SIDEWALK AND PEDESTRIAN WAY**  
**EASEMENT ON PROPERTY GENERALLY**  
**LOCATED AT SOUTH 70<sup>TH</sup> STREET AND OLD CHENEY ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 18, 2002

Members present: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn.

Staff recommendation: Approval of the waiver of sidewalk adjacent to Lot 1; denial of the waiver of sidewalks within the pedestrian easement and adjacent to Lot 2, along South 70<sup>th</sup> Street.

Proponents

**1. Susan Johnson**, 6801 Hickory Crest Road, presented the application. She and her husband developed the field behind their house into 4 lots, Hickory Crest 4<sup>th</sup> Addition. Her husband passed away just before Thanksgiving last year and she is now completing what needs to be done in that development, and that includes the sidewalks. Johnson submitted that the sidewalks called for in the final plat are no longer necessary. She is requesting the waiver of the sidewalk requirements that would go along 70<sup>th</sup> Street and the short sidewalk that would come out of the cul-de-sac to 70<sup>th</sup> Street.

With respect to the sidewalk along 70<sup>th</sup> Street, Johnson noted that there is no other sidewalk along 70<sup>th</sup> Street from Old Cheney Road up to Antler Drive. Those sidewalk requirements have been waived. If Johnson were to build the sidewalk along 70<sup>th</sup> Street as it was originally approved, it would end up running into a retaining wall. And pedestrians then could not go further north past that retaining wall because there are ornamental plantings between the retaining wall and So. 70<sup>th</sup> Street. Johnson believes it would be unsafe to invite pedestrians to go there. They also could not cross 70<sup>th</sup> Street safely at that point because there is no traffic control system there.

Johnson noted that the staff is recommending waiving the sidewalk along Lot 1, but still recommend that the short sidewalk out from the cul-de-sac to 70<sup>th</sup> Street be built, and then building a sidewalk from that cul-de-sac sidewalk down south to Old Cheney Road. The reason that is given by the staff is that it would provide residents of Hickory Crest Subdivision direct access to Old Cheney Road. Johnson pointed out that in the subdivision, there is direct access to Old Cheney Road which goes right down Hickory Crest Road to Old Cheney Road. In fact, it is shorter and more direct than the proposed sidewalk. Johnson submitted that there is a more direct route which already exists, and the proposed route would be longer and more costly.

Upon receipt of the staff comments and recommendation, Johnson contacted residents in Hickory Crest and they do not want this sidewalk. The neighbors think the sidewalk is unnecessary and they also believe it is a security risk.

Johnson did inquire of the Planning staff why the sidewalk from the cul-de-sac to 70<sup>th</sup> Street is required. She was told that there is a policy that whenever you have a cul-de-sac that abuts an arterial street, there needs to be egress. Johnson drove around the area and counted

seven cul-de-sacs in that immediate area on streets that abut 70<sup>th</sup> Street and Old Cheney Road. None of them have a pedestrian walkway or a sidewalk that goes from the cul-de-sac to the arterial.

In addition, Johnson believes that the sidewalk from the cul-de-sac to 70<sup>th</sup> Street will create a security problem. She provided photographs. 70<sup>th</sup> Street and Old Cheney Road have an enormous amount of vehicular traffic. To provide visual and noise buffers to the owners, pine trees were planted along the back part of Lot 1 and scores of cedar trees were planted along the periphery of Lot 2. So now, in order to provide that visual and noise barrier, there are two rows of mature trees and a solid wood fence. If we now put a sidewalk between Lots 1 and 2 we are inviting the security risk for burglary and for the safety of our children. One of Johnson's neighbors asked her to ask the Commission not to invite vandalism.

In conclusion, Johnson stated that this final plat made sense when it was developed in 1997, but things have changed. There is no sidewalk along 70<sup>th</sup> Street and there is a perfectly good way to get to Old Cheney Road from the subdivision, i.e. along Hickory Crest Road. The installation of this sidewalk would be an unnecessary expense and it is no longer reasonable.

**2. Tim Artz**, 6948 Kings Court, which is directly south of the proposed pedestrian easement from the cul-de-sac to 70<sup>th</sup> Street, testified in support of the waivers. His concerns are vandalism and the safety of their children. He would prefer not to have access into his back yard where his children are going to be playing.

**3. Tom Jackman**, 6936 Kings Court, testified in support. The sidewalk would be directly on his property and he has similar reasons to support the waiver. His children play in the side area of his house to the south of his home. The fence line had to be brought in about 20-30 feet in order to give an easement for the turn lane on 70<sup>th</sup> Street. The turn lane takes about 15'. The fence is in another 15', so the back yard is very, very narrow. Therefore, his children play on the south side where the sidewalk would be built. It would also be a financial burden because he will be required to move about 4-5 water sprinkler heads. He does not see the justification for this sidewalk. Security is also a concern because the large trees would provide a good hiding place.

### Opposition

**1. Craig Groat** testified in opposition. Lincoln is known as a pedestrian city. Sidewalks are required and a necessity. He does not want to walk across people's grass. A few years ago there was a strong requirement by the city to build sidewalks. He believes that people that use the trails are very, very responsible. If anything, Groat believes that this sidewalk would probably increase the security. Sidewalks are a necessity to the city and part of our long term plan.

**Staff questions**

Steward noted this to be a relatively new subdivision. Why do we not have sidewalks on 70<sup>th</sup> Street? Tom Cajka of Planning staff explained that there are four different final plats in the area where there is no sidewalk between Old Cheney Road and Antler Drive. When all the plats were approved they were required to have sidewalks. Two of the plats later came back with waiver requests and the sidewalks were waived by the City Council. Hickory Crest 1<sup>st</sup> Addition, immediately to the north, is still required to build sidewalks. Dennis Bartels of Public Works pointed out that the retaining wall exists because the city was restricted on right-of-way. These plats were approved when 70<sup>th</sup> Street was a county road right-of-way. Hickory Crest is considerably lower than 70<sup>th</sup> Street and Old Cheney Road and as you went further north there was a grade difference. When Colonial Hills was approved, there was only 40' of right-of-way so the city was limited. The decision was to forego the sidewalk on the west side of 70<sup>th</sup> Street in the interest of preserving private property. We needed the retaining wall to make up some of the grade difference. There is sidewalk on the east side of 70<sup>th</sup> Street.

Carlson inquired about the future trail. Cajka advised that there is a 10' wide bike trail shown on the north side of Old Cheney Road as part of the street improvements. It is shown going further east of 70<sup>th</sup> Street in the Comprehensive Plan.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** September 18, 2002

Larson moved approval of the waivers as requested by the applicant, seconded by Bills-Strand.

Carlson moved to amend to require the pedestrian easement between Lots 1 and 2 on Hickory Crest (which would be the staff recommendation). Upon further discussion, Carlson withdrew the motion to amend so that the original motion could be voted up or down.

Schwinn commented that since the major bike path is being built on Old Cheney Road, he believes it would probably be better to move that pedestrian traffic to that major bike path rather than between those lots on a busy street. There is a grade difference that would encourage kids on bicycles to go down that hill and slam into the intersection. He believes it is a safety issue.

Steward indicated that he is normally opposed to any change that eliminates sidewalks, but in this case he believes there are extenuating circumstances. He does not want to be judged as softening his position on sidewalks, but in this case he believes the waiver is justified.

Carlson disagrees with the motion with regard to waiving the pedestrian easement. The testimony that there are five cul-de-sacs that don't have an easement make it even more important that one should have an easement to get egress out of there. He gets concerned when we have plats that get approved, then items get built in that dedicated right-of-way and then the owners later think it is a burden to remove those improvements. The plat was approved in 1997 and it is workable. It is still important to be able to get out of the cul-de-sac on to the street.

Motion to approve the waivers as requested by the applicant carried 7-2: Steward, Duvall, Krieser, Bills-Strand, Taylor, Larson and Schwinn voting 'yes'; Newman and Carlson voting 'no'.

**SPECIAL PERMIT NO. 1984**  
**FOR A PAVED PARKING LOT IN THE**  
**R-6 RESIDENTIAL ZONING DISTRICT**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 17<sup>TH</sup> STREET AND GARFIELD STREET.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** September 18, 2002

Members present: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn.

The Clerk noted that the record now consists of a letter in support from the Near South Neighborhood Association.

**Proponents**

**1. Brian Carstens** appeared on behalf of the applicant and acknowledged meeting with the Near South Neighborhood Association and receiving their support.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** September 18, 2002

Duvall moved to approve the staff recommendation of conditional approval, seconded by Bills-Strand and carried 9-0: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn voting 'yes'.

**CHANGE OF ZONE NO. 3366,**  
**TEXT AMENDMENT TO TITLE 27,**  
**and MISCELLANEOUS NO. 02005,**  
**TEXT AMENDMENT TO TITLE 26,**  
**REGARDING THE IMPOSITION OF**  
**IMPACT FEES.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** September 18, 2002

Members present: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn.

Chair Schwinn explained the protocol for this hearing. There will be organized group presentations and testimony will be alternated between support, opposition and neutral.

**PRESENTATION BY CITY STAFF - Support**

**1. Steve Henrichsen** of Planning staff briefly review the overall proposal. This proposal has been in process for over two years, starting with the Infrastructure Financing Advisory Committee in August 2000, with substantial process and discussion in the fall of 2000. Quite a bit of that work was continued forward and has been included in the Comprehensive Plan with was adopted in May of this year.

Henrichsen stated that the initial ordinance was before the Commission in June, at which time the staff requested additional time. During the past three months the staff has conducted over 40 meetings with various groups in an attempt to balance the various concerns and issues. The revised ordinance before the Commission today, dated August 26, 2002, reflects that balance. The miscellaneous application regarding park land dedication has not been revised. Henrichsen reminded the Commission that impact fees are just one part of the overall comprehensive solution. When this legislation is forwarded to the City Council, the City Council will also be deciding the impact fee schedule for each of the next 5 years.

Henrichsen submitted that part of the goal of the overall Infrastructure Financing proposal is to provide for the growth shown in the new Comprehensive Plan, which included over 40 square miles for additional development in the next 25 years and to achieve the goals of the Comprehensive Plan to maintain investment in our existing neighborhoods. The intent is to have a more equitable and predictable system than our current system for negotiating the costs of off-site improvements on a case-by-case basis. Henrichsen reiterated that the impact fee system is one part of the Infrastructure Financing proposal, with the focus being to have a more fair and equitable system in terms of the share of costs assigned to new development.

Henrichsen pointed out that overall, there will still be a lot of costs that will be the responsibility of the community as a whole, e.g. utility rates (there will be a 7% rate increase for water next

year); maximize use of revenue bonds for utilities which are paid back through utility rates; work with the state on distribution of the state gas tax formula; general obligation bonds to pay for many of the improvements that are needed, i.e. fire stations, trails, regional parks, community parks, swimming pools--there is a whole host of other infrastructure items that are not part of this impact fee proposal that will continue to be paid for by the community as a whole; a city-wide stormwater utility is another one of the items for which the community as whole will pay.

However, Henrichsen believes that everyone has been focusing on the part of the proposal that deals with impact fees. One of the main reasons we looked to impact fees is because they are far more predictable and equitable than many of the other solutions that were offered in terms of which portion of the costs new development should pay. In terms of impact fees, we have looked long and hard to try to find a balance in terms of the many different, sometimes often competing changes that were proposed for the ordinance. However, many important changes have been made through this process and he does not believe that some of it is clear to the general public. Most importantly, the fees would be phased in over a five year period. They would start at \$2,500 for a single family home and go up to \$4,500 and would be paid by all new construction, whether it be residential, industrial, warehouse or multi-family residential. They would be phased in over a number of years, which would certainly be an important measure in terms of addressing any economic impact. More importantly, the proposal gives category exemptions to the many annexation agreements on property annexed over the last 10 years. If the developer paid for off-site improvements for water and streets in an annexation agreement, then they would be exempted from the impact fee for water and streets. There are thousands of single family lots covered by those annexation agreements and over 10,000,000 square feet of commercial and industrial space. Therefore, a good portion of development over the next 5 years will have significantly reduced impact fees because they have already made some contribution to the off-site costs.

Henrichsen also explained that today's proposal includes changes regarding low income housing to reduce the impact in terms of granting an exemption for people with less than 60% of median income. There have also been changes in terms of the Downtown and the Antelope Valley redevelopment area. That area will not be paying arterial street impact fees.

Henrichsen then submitted the general outline for the Infrastructure Financing Committee proposed by the Mayor (**Exhibit 1**). The Mayor's charge to the Infrastructure Financing Committee will include: 1) review viable financing tools to provide adequate and predictable funding for the timely provision of streets and highways, water, wastewater, stormwater and parks; 2) examine the timing, prioritization, staging and phasing options for infrastructure improvements; 3) consider the results from a one-day public-private sector workshop; 4) formulate a financing and capital improvement staging strategy in order to close the project revenue gap; 5) identify state legislative agenda items for the City to pursue; and 6) review the impact of the selected financing options on housing affordability for all areas of the city,



community economic growth and development and the long term viability of existing Lincoln neighborhoods. The committee work is proposed to be completed by June 1, 2003.

Henrichsen concluded, stating that the impact fee proposal is a good compromise between many different interests. This is a proposal supported by the Downtown Lincoln Association (DLA), the Lincoln Chamber of Commerce, and over 14 neighborhood associations. It is a balanced approach in terms of having a solution to address the portion of the costs for growth and development that should be paid for by the development itself.

**2. Jim Duncan of Duncan Associates**, the consulting firm that did the impact fee study, testified as part of the staff presentation. Duncan Associates is a plan implementation firm, focusing on land development regulations and infrastructure financing studies, of which the impact fees become a very large portion. Since 1987, when the firm was started, Duncan Associates has drafted over 100 codes and over 200 impact fee studies for cities, counties, regions and one state in 40 states in the United States. In this part of the country, a few of their infrastructure financing clients have included Kansas City; Lawrence, Kansas; Minneapolis, Minnesota; Ft. Collins and Greeley, Colorado; Bozeman, Montana; and Boise, Idaho, among others. There is a preponderance of Duncan Associates clients across the Sunbelt.

Duncan gave some observations on impact fees. Impact fees are not new. They have been around for probably 50 years. Colorado was one of the first states to get into impact fees because the cities and counties growing the fastest were the ones that discovered them. In the late 70's and early 80's the rest of the country discovered them.

It is important to understand that there are two big myths about impact fees. One is that a lot of communities think they are a panacea--they are going to solve all of their problems--and that couldn't be further from the truth. There are political, legal and technical constraints. They are probably one of the most supervised of all infrastructure financing tools. The second myth is that impact fees are a no growth tool. This is not true. Impact fees provide infrastructure and what fuels growth? It's infrastructure--if you don't have roads, water and wastewater, you are not going to be able to issue building permits. What you don't want to happen is to end up with inadequate facilities. For example, Santa Fe, New Mexico, is under moratorium due to inadequate water because they didn't provide for adequate facilities ahead of time. Impact fees will help you keep that from happening.

What is Lincoln? What are you doing different and right? Duncan highlighted six areas that are unique to Lincoln that has made this a much more thoughtful and locally tailored package. 1) Lincoln has made this part of a balanced overall infrastructure financing program--this is not just an impact fee study. Lincoln is looking at gas tax, wheel tax, etc., with impact fees as a small but significant component of that overall package; 2) Lincoln has involved stakeholders from the start. Citizens have been involved and have helped mold this program--the advisory committee is a critical piece; 3) Lincoln is considering a phased in, partial cost solution.

Lincoln could legally go as high as \$9,000. The committee and staff has come to less than half of that; 4) Lincoln is only looking at a limited number of facilities, i.e. four, the basic required facilities to make growth grow--roads, water, wastewater and parks; 5) Lincoln has what Duncan would call a "smart growth sensitive package", such as designing the impact fees to exclude the Downtown and Antelope Valley areas in order to be sensitive to that; and 6) Lincoln has addressed the low income housing issue and there are subsidies for legitimate affordable housing.

**3. Allan Abbott, Director of Public Works and Utilities,** testified as part of the staff presentation. He noted that when the first draft was presented, there were lots and lots of questions. The staff requested deferment to work more closely with those involved to come up with a more balanced and fair package. There are always going to be compromises made, and when you compromise there are going to be people that are not happy with the final recommendation on both sides. Overall, however, Abbott does not believe that the staff recommendation is that far apart from the community.

There are reasons for the opposition and Abbott explained what has been done. "Growth pays for itself" has been repeated consistently through the past year and a half. It is true that there has been a significant increase in revenues that come into the city--sales tax, property tax, income tax--but none of that goes to the construction of the infrastructure that we talking about, with the exception of parks receiving some revenue from the general funds. Water, wastewater and streets are either financed with enterprise funds (utility rates) or gas tax and wheel tax that the citizens pay.

The fact that we have a shortfall has been questioned. Abbott submitted that it should come as no surprise to this Commission that there is a shortfall. He remembers stating during the Comprehensive Plan process that "we appreciated the growth, we agreed that 1.5% growth rate was appropriate but that there were not sufficient funds to pay for this growth and that new sources of revenue would have to be found for that growth to occur." The Comprehensive Plan indicated that one of those sources of funds was impact fees.

Abbott noted that there has been a cry to raise utility rates. Our water rates were slightly higher in 2000 than either Grand Island or Omaha. But in the state, Lincoln's rates are lower than the majority of the communities throughout the Midwest. We are higher than Omaha or Grand Island because we bring our water in from the Platte River. Not too long ago, some of the same people objecting to impact fees were saying one of the things that drive businesses and people away are high utility rates. We can't have it both ways. We need to have an appropriate contribution by the developed area. It's not the developer. It's not the builder. It is the new home owner that is eventually going to pay the impact fee. But that is no different than what has been happening in the process today with the exactions in dealing with development. As development pays for off-site improvements, he is fairly sure that it is passed on to the builder in the lot prices, and then passed on to the buyer eventually because no one is in the business not to make money.

Abbott also noted that we have heard, “use more revenue bonds”. Abbott pointed out that revenue bonds (whether they are revenue bonds which are paid by utility rates or general obligation bonds which are paid by property taxes) have to be paid for. Bonds do not generate money for anyone except those who buy the bonds. With the impact fee proposal, we have 15 million to spend, and 1.5 of that over the next 20 years. If we bond that 15 million up-front, we’re going to be paying back about 22.5 million over that 15 year period. It will cost more to bond than not to bond. Bonding gives you more money up front so you can catch up. But you have to pay bonds back. We have already indicated that we will maximize our bonding efforts for both water and wastewater and we are looking into how we could use fees on the road fund side. But, we don’t have the ability to raise those fees. Abbott ensured that the city will also work with the state to attempt to get a better share of the gas tax.

With regard to tap fees, Abbott believes there is some confusion between a tap fee and a connection fee. A tap fee is where the individual homeowner pays a fee to have the water line hooked up to the water line in front of the house. A connection fee is used in Omaha much like an impact fee—they charge X number of dollars for connection to a main from a subdivision. If we adopted a flat connection fee, that would mean that any subdivision would be paying as much as a high water user. The impact fees are based on the size of the meter of the people using it so that it is consistent with the water they use and the pressure they put on the water system much as a commercial use generates more traffic for a street system than a subdivision.

With regard to the issue of “significant impact on the economy”, Abbott stated that the city has done everything possible to initiate the impact fee ordinance with credits (categorical exclusions) and phasing the impact fees in over a 5 year period. The impact on the economy over the next 5 years should not be a shock, and 5 years from now it can be built into people’s programs.

As far as how to keep the impact fee from going beyond \$4,500, Abbott suggested that impact fees are probably watched more closely than anything else. It would take action by the City Council and public hearings to have the impact fee go beyond the \$4,500.

Abbott agrees that new development should not pay all of the costs. That is why the city did not propose the \$9,000 and came to an agreement that \$4,500 after five years was fair.

Abbott then addressed the comment he has heard that has bothered him the most--“golden street standards”. To reduce the street standards does nothing. To continue with the mistakes that have caused the sins of the past with streets is doing nothing more than creating future sins. There may be staging possibilities, but the concept of having enough room to build what is needed in the future rather than disrupt the public is the most important thing.

As far as the allegation that impact fees are not legal, Abbott pointed out that the legal counsel for Duncan Associates has reviewed the proposal and believes that Lincoln has the authority. He does not believe anything is ever “court safe”.

As far as “waiting for the full package”, Abbott referred to a puzzle—impact fees are a part of that puzzle—before you can put a puzzle together, you’ve got to take a piece out of the box and start. If you leave every piece in the box you never get the puzzle put together. The impact fees are an important part of that puzzle and it is where we should start.

Question: Bills-Strand inquired whether the August 26th draft is the exact language intended for the Commission to act upon. Henrichsen clarified that the August 26<sup>th</sup> version is what is before the Commission today.

**PRESENTATION BY HOME BUILDERS ASSOCIATION OF LINCOLN - Opposition**

**4. Marty Fortney**, 1950 S.W. 112<sup>th</sup> Street, testified as **President of the Home Builders Association (HBAL) of Lincoln**. *Exhibit 2* was submitted (Exhibit 2, entitled *Impact Fee Analysis Handbook* submitted by the Home Builders Association of Lincoln, is an official part of the public record and may be found in the Planning Department offices. The contents are not attached to these minutes).

Fortney stated that since the early 1950's, HBAL has been chartered to strive to keep housing affordable and keep that dream available to everyone. This proposed impact fee could deter that. HBAL has have brought forth many options to finance costs without the use of impact fees. Today there are people concerned about providing housing for their clients, and maybe keeping their business in check and even some about keeping their jobs. All those in opposition stood in the audience (75-100). Fortney pleaded that alternatives need to be studied over the next few months that may reduce the need for implementing impact fees. Fortney requested that this ordinance be placed on pending until such time as the Mayor's proposed committee has finished its work and until a comprehensive solution may be considered as a total picture. HBAL believes we can find a solution that is fair to all.

**5. Keyvan Izadi**, a land use planner and economic developer, testified on behalf of the **National Association of Home Builders**. His area of concentration is impact fees. From his perspective, two injustices have occurred here. First of all, there has been the sole focus on impact fees as the solution by and large. The effects and ramifications have not been made clear or illustrated in a clear manner. The second injustice is that the Duncan report in many respects uses national averages to give cost estimates of what would actually occur in Lincoln. That is erroneous and not legally justifiable. The affordable housing issue has been brought up as a ramification of impact fees. The people that will not meet the standards of the affordable housing exemption will be forced to move out of the community. These are your teachers, policeman, firemen, etc. There are approximately 40,000 households earning less than \$39,000 in Lincoln--that is about 40% of the households. These are the individuals that

won't be able to sustain housing within the city limits. You will end up with an impact on roadways in terms of morning commutes—rush hour issues and roadway congestion—think about everyone coming in from other jurisdictions into Lincoln and leaving at peak hours. That will also lead to economic development downturn in terms of a significant impact on the retail tax base, the income tax base and property tax base. Each of these households has to be fed, furnished and serviced. The businesses are going to migrate out following this population, which will lead to a situation where all growth is taking place outside of Lincoln and you will not be able to encourage any sort of economic development activity within the city limits.

The use of national averages is useful only in conversation. Duncan was hired to do a technical memorandum that is customized to Lincoln. However, what they actually offered is national averages where data was not available—that was their disclaimer. The National Home Builders Association refutes that. The data is available and the HBAL is making that data available.

As far as the growth rate issue brought up in the Duncan report, Izadi referred to the 1.6% growth rate over the past decade and he believes that to be steady, healthy and basically sustained. When you look at national averages, there are “boom and bust” economic growth rates that go on everywhere else across the country. Those municipalities, in a heartbeat, would change places with Lincoln. Don't change what you are doing. It seems to be working in terms of growth rate. Don't stir the pot.

Izadi left the Commission with three questions: 1) Have all the benefits of growth been assessed? A report was prepared outlining the costs of growth. They gave the benefits only a cursory glance. Are you willing to forego the inputs into the income tax base, the property tax base and retail tax base? 2) Is the message to your workers that hold up this town going to be that we're going to move you out? That's what is going to be occurring here. 3) Have all the alternative infrastructure financing options been assessed? We would say they have not and the HBAL has their own proposal to submit today. Impact fees are known as the “welcome stranger tax”—it is not just strangers that will be affected. It is every single one of you local residents.

**6. John Layman**, registered commercial certified appraiser in the State of Nebraska who has been practicing in Lincoln since 1969, testified in opposition as part of the HBAL presentation. His quest is to discuss the real estate value implications if the impact fee is initiated. It is his professional opinion that impact fees will create inflationary pressure on the market value of residential, commercial and industrial properties. This government action results in a transfer of an expense item being converted to a capitalized asset which could be valued. This results in an incremented value to all properties in the community over a period of time. The assumption, which is correct, is that there is a benefit to the community as whole in providing infrastructure improvements. The value of real estate is directly affected by the cost of production. In real estate, a capital expenditure is an investment of cash for the

creation of a liability to acquire an asset. That is distinguished from a cash outflow or expenses that are normally considered part of current period operations. In essence, the impact fees are designed to produce an increase in the value of the property and will increase taxes in addition to the impact fee. So the source of income will be the impact fees to government and an increase in real estate taxes. The cost of the impact fees will eventually lead to an increased value of individual real estate purchases of homes and commercial properties. Regardless of the location, the proposed benefit being received will affect all properties within the defined service area of Lancaster County and the City. The impact fees will directly result in the value of all these parcels. There is new construction occurring in all areas of the City. The first sale of a new dwelling or commercial building will sometime in the year 2003 include the impact fee which will be passed on to the buyer. As more new residences are sold, the effect in the market place is that the land prices and the cost of the dwelling unit will adjust upward and this will become a new market value in the various areas of the city. The appraiser and the county assessor will take into account the current market price being paid for real estate in estimating the market and the assessed values throughout the neighborhoods. In essence, the homeowner may be paying presently for a future off-site improvement. The appraiser's opinion of market value will assume that the city will provide the off-site improvements within the 10 year timetable proposed for the expenditure of funds.

Layman also observed that the Comprehensive Plan that was approved over the last two years is indeed a primary guide to the physical development of our community. The key to a successful community is the concurrent development of the city's infrastructure with the development of the community. Capital improvements are separated into two areas: public and private sector contributions. Layman referred to page F148 of Comprehensive Plan where there is a statement regarding the guiding principles for financing the urban infrastructure. Layman assumes that the Commission will consider these four principles in their deliberations on impact fees. He places most emphasis on the first and last principles.

**7. Duane Hartman**, 6230 S. 31<sup>st</sup>, owner of **Hartland Homes**, testified as part of the HBAL presentation. Hartland Homes was created and is operating to provide affordable housing in Lincoln. Hartland Homes has built over 1500 houses in Lincoln over the past 17 years, including 150 last year. Because we are providing affordable housing, we must do business different than other builders. We must develop our own lots, we must build large volume of homes, we must have our own sales staff and we must pay our buyers' points and closing costs. We must operate this way to lower the home cost and the cash at closing requirement so that our customers--the little people--can quit renting and live the American dream of home ownership. We do everything we can to keep the price down. If we could sell our product for thousands less, we would be doing so. Impact fees will not be paid by us or any other builder. The home buyer will have to pay them in the cost of their home. Impact fees will have a detrimental effect on all development and construction, but the effect on affordable housing will be much greater because with higher costs and higher payments, many of our customers will not qualify for a loan. Many of our customers now pay over 40% of their gross income for their

home. All appraisals will be short—primarily FHA and VA—these appraisals will be short because there are no comparables for the appraisers to find in the market that will have this additional fee added. If the appraisal is short, they will not be able to buy the house because they cannot make up the difference. Fewer homes will be available under the NIFA sale price limit. Because Hartland Homes has to pay their customer's soft costs, Hartland Homes has to pay their points, closing costs, construction interest and sales commission to reduce their cash out of pocket. The price of a Hartland Home will have to go up at least 1.5 times any impact fee put on the building permit. Thus a \$2,500 impact fee will raise the price to his customer at least \$4,000. We're going to collect it from those who can afford it the least. Because of these facts, affordable housing will be affected dramatically.

Hartman submitted that impact fees are a form of discrimination because most of the negative effect will be felt by those who can afford it the least—the minorities, the poor and the young blue collar workers. They are the ones who need an inexpensive home. The cost of all homes will go up because it costs more to replace them. Older homes will go up in price along with the new. These are the people who need affordable rents. All rents in Lincoln will go up because the cost of replacing rental units will increase. Fewer people will be moving out to new houses because they can't afford it, and new houses will not be built until the rents will cover the additional cost of the impact fee.

We will be losing the hourly wage jobs because of the economic slowdown that will be caused by impact fees. There are a lot of these people that work for construction companies and their subcontractors, say nothing of the support businesses that are supported by these people. And they can least afford to pay more real estate taxes caused by the increased value of their home.

Hartman then quoted from *The Irving B. Harris Graduate School of Public Policy Studies* report entitled, "Impact Fees Linked to Rising Home Costs". (This study is found in the information submitted by HBAL **[Exhibit 2]**). This study conclusively showed that impact fees increase the price of new and existing houses. The fees were increased repeatedly, dramatically and unpredictably, making it difficult for developers simply to incorporate impact fees into the fixed-cost components of their projects. Impact fees may place a disproportionate burden on middle and low income households.

Hartman concluded his testimony, stating that growth is a benefit for Lincoln as a whole and should be paid for by all of us. Many older neighborhoods do not want to pay for growth. Then why should people with new streets, walks and flood control devices paid for in their home price pay for replacing old streets, sidewalks and flood control projects in older neighborhoods? And why should people who don't have kids pay for schools? And why should those who don't use the parks and trails pay for them? And why should those with back yard pools pay for city pools? Need I go on? We are a united city or we're a fractured city--what's it going to be?

Hartman does not believe that exempting affordable housing is going to work because the home builder does not know who the buyer is when they take out a building permit.

**8. Ron Ecklund, HBAL**, 800 Danville Circle, testified as part of the HBAL presentation in opposition. He is the current Chair of LES, but his remarks in this testimony are his own opinions. The LES Board and staff have not taken an official position on this issue. This issue has been around for a number of years. He worked with it first on Mayor Johanns' task force on development on the fringe of Lincoln, and since then, he has worked on it through LES.

We start with the question: What does it take to build a new house in Lincoln? The answer includes land, water, sewer, electricity, gas, cable tv, streets, etc. Then we ask the question: Do the gas company and telephone company make more money or less money as the city grows, and do they recover their up-front capital investments? The answer is, yes. Do water, sewer and electricity make money in the city and do they recover their up-front capital investments? And the answer is, they can if they wanted to but they're not for profit entities, but they do recover their up-front costs. So the question then is: Why does water and sewer need an impact fee and electricity does not?

Ecklund then referred to the section of **Exhibit 2**, "Analysis of the City Budget and Finances". Ecklund submitted that what we are really debating at this point in time is a \$9,000 impact fee because that's where it will ultimately go. Of that \$9,000 almost \$5,500 relates to water and sewer, a little bit for streets and then parks and trails are even minor. Note that there is no impact fee for electricity. What's the difference between LES that they don't need a fee that water and sewer does?

Ecklund then referred to the graphs in **Exhibit 2**. Page 2 is a graph of the cash balances of the three utilities for the City of Lincoln. Between the three utilities, as of August 31, 2001, there is \$110 million in cash and investments. That is about \$500 per person in Lincoln, which is about \$2,000 for a family of four. And you have to ask yourself the question: How many families of four in this town don't have \$2,000 laying around for next month's house payment or next month's rent, but they have it sitting around through city finances with their cash reserves in their utilities.

Ecklund then referred to the graph showing net property, plant and equipment for the three utilities. LES has about 434 million dollars in undepreciated costs. Lincoln water and Lincoln Sewer combined are about 316 million. If we look at the proposed impact fee for



water and sewer at about \$5,500 and prorated that to LES based on the net investment in property and equipment, we would be talking about a \$7,500 impact fee just for LES. Why doesn't LES need that impact fee?

Page 4 is a graph of the debt of the three utilities. LES's debt continues to grow as their property and equipment grows. The debt for water and sewer starts out low and diminishes throughout time, even though they continue to add to the system.

Page 5 is a graph of the net worth of the three utilities. Even though there is a much higher investment in LES's property and equipment, the net worth of the three entities are remarkably similar again.

Page 6 is a graph representing the components of the units of equity of the three different utilities. There is already a contributed capital that is applied to both water and sewer that is not applicable to LES. That's just telling you that the developer, home builders and businesses already contribute to the infrastructure that is capitalized within water and sewer but it doesn't necessarily happen at the same rate as for electricity.

Page 7 is a graph of the debt of the three utilities as a percentage of their investment in property, plant and equipment. Ecklund noted that the debt of LES always flows between 70 and 80 percent of their investment in property and equipment. The debt balances for water and sewer have decreased but as a percent of their investment in property and equipment, you really see a declining line at this point in time. Maybe that's the secret as to why LES doesn't need an impact fee and water and sewer supposedly does.

The data sheets from which the graphs were created are on page 8.

Page 9 is the HBAL alternative for impact fees for water and sewer. Ecklund explained the table. The net cash available equals how much cash we're generating from operations, less the cash needed to fund current plant and equipment, less the cash needed for current needs less the cash needed to retire bonds. LES does not meet that test on all of the most recent six years, but everyone will agree that LES is a wonderful utility, properly managed and has very low rates. Under this scenario the water system doesn't quite make it, but we have \$120,000 million that we have not invested anywhere yet. We can either earn interest off of it or we can invest it in our infrastructure and have more utility revenue. This also does not take into account any raises in utility rates. With regard to wastewater, we have enough cash in the bank to completely pay off the debt of the sewer system. Therefore, the sewer system in this town could potentially be completely paid for. This tells us that we could have another 85 million dollars of debt in the sewer system. There is a great deal of potential bonding capability.

Ecklund suggests that the cost of public utilities should be paid for by the users of public utilities. Since there is typically a large up-front capital investment, we are really discussing who will finance that cost. With impact fees, homeowners usually finance it as part of the mortgage. HBAL is suggesting that the City use their tax exempt financing and they can do it much cheaper than the individual homeowners. If you borrow 15 million dollars, it will cost 22 million dollars to repay it down the road. But if we take that 15 million dollars and jam it into our homeowners and they have to finance it at a higher rate, it may cost 28 million dollars down the road to pay off that same level of debt. Because of interest rate differential between an individual home mortgage and the interest rate differential on a LES, Lincoln Water or Lincoln Sewer bond, the city can save the property owners significant amounts of money just by handling the financing. Ultimately, the users of the utilities end up paying for it but the city is financing it at a lower rate. He believes this concept needs to be studied significantly before we go on with the potential of impact fees and their potential problems.

With regard to streets, they are currently financed with our gas tax, city sales tax on motor vehicles and wheel tax. Ultimately, they are spent for some engineering expenses and actual street construction. The graphs on page 10 show the makeup of the categories of the street fund net worth. There are various categories for undesignated, designated for subsequent years, inventories and encumbrances. Ecklund noted that the amount of "undesignated fund balances" has gradually increased over a period of time. Page 11 represents the data sheet for this graph.

Page 12 is a graph showing the revenues and expenses of the street construction fund without any general administrative expenses. This the way personal finances are supposed to be handled--revenue always exceeds expenses. Page 13 is the graph of revenue and expenses even incurred with the general administrative expenses. With exception of one year, revenue always exceeds expenses. It's a very nice, comfortable way of financing streets. Pages 14, 15 and 16 are data sheets to support page 13. Page 17 is a graph of budgeted versus actual revenues in the street construction fund. Ecklund again noted that budgeted revenues are always less than what we actually receive. In fact, in the year ending August, 2001, we budgeted almost 14 million dollars less revenue than what we actually received--that has to do with some of the state and federal reimbursements. What happens is that we end up getting huge amount of monies that are stacked up in the fund balances of the street construction fund and we get comfortable with them and they never get spent. That's great for personal finances, but Ecklund is not sure that it is good governmental financing. The money is taken from the citizens in the form of taxes and it should be spent for the purposes for which it was levied.

Ecklund further pointed out that we have a significant back log of street projects that have been identified. Interest rates are at a 40 year historical low. We should utilize the fund balances that we have, and then try to find a way to seize the LES model and bond for the construction of streets. The cost of streets should be paid for by the users of the streets. With

a large up-front capital investment, we're really discussing who is going to finance it. HBAL would assert that the city can do this as a block, as a unit, much more cheaply than each of us as individual homeowners because they have the power of tax exempt bonds. We can pledge the gas tax, motor vehicle tax and wheel tax to the bonds.

Page 19 represents the history. It looks at the revenues that come in and the expenditures that have been incurred over the recent years. If we paid cash for 20% of our street construction and financed the other 80%, using the revenues that are coming in, then we would have a number available for debt services of about 15 million dollars a year. How much debt do we think we can service with a cash flow of 15 million dollars a year? We could probably get 160 million dollars of debt. Ecklund does not think we need that much and it is unrealistic to expect or to ask for that much, but there is significant capability there to bond the backlog of street construction.

Ecklund is hopeful that the Planning Commission will consider this alternative. We have a wonderful model at LES. This town owes a great deal of gratitude to Walt Canney who set up and installed a mind set and a culture at LES that is different from the other utilities in this town. The example is there but we've never followed it. Before we go down the impact fees road with all of the potential negatives, let's study this alternative more.

#### Questions

Newman asked for clarification as to whether the city can max out on bonds. She understands there is a law that says the city can only bond out so much. Ecklund does not know what the limitation would be. He assumes it would be dictated by the bond counsel.

**Don Herz, Director of Finance** for the City, offered that he has been involved with LES and with the water system in issuing revenue bonds so he is familiar with both processes. He commends both utilities for doing an excellent job of administering their finances. But there is a significant difference between the capital structure at LES and that of the water and sewer system. Typically, the assets owned by LES have a life that is equal to the term of their bonds, whereas with the water and sewer system, a fair amount of what they purchase has a much longer life and is not depreciated as fast and as a result there is not that match which LES has. The water system and sewer system both have a significant amount of contributed capital. At the time that a subdivision is annexed, there is a fair amount of infrastructure contributed to the water and sewer system that you are obviously not going to finance. Herz knows that water and wastewater are planning to maximize use of bonds to cover the gap that has been identified. The issue is, should all of that gap be covered by revenue bonds? You have to have revenue to pay for the debt services, i.e. significant increases in utility fees down the road. Should all of that infrastructure be paid through increased utility rates? You can't just issue debt. By the term "revenue bond" you have to have adequate coverage. The City would be in violation of its debt covenants on existing bonds. The City would have to raise rates in order to issue that amount of debt.

Herz also stated that there is a more significant difference between the street construction fund and LES in the sense that it is much more difficult to raise rates to get the additional revenue in street construction to pay for the debt service. If you issue the debt, then you have to divert a significant portion of cash flow to debt service, resulting in much less to pay for the maintenance.

As far as contributions to infrastructure, Schwinn believes we are referring to the developer contributing all of the street, sewer and water of that subdivision to the city. Herz clarified that the developer does not contribute all of the cost for streets. Herz also advised that beginning next year, the city will be booking infrastructure as an asset. The accounting for the city will change significantly next year.

Steward inquired about the balances. Herz acknowledged what Abbott had indicated, i.e. on the street side, there is a significant amount of work that is going on that is going to be drawing those balances down. On water and sewer, the City's financial advisor has indicated that we need a larger balance than LES. Water and sewer will need a higher balance because we don't have the ability to issue the short term debt that LES can. We need more of a cushion than LES. Abbott added that on the street balances, it is true that we have been about one year behind spending the money that comes in per year. We've taken steps to eliminate that. Part of that problem was that you had to have all the money in the pot before you let a project. We are now letting the project before we can pay for it. To do that you have to get caught up. The balance in the streets is about one year of funding. It is also true that we have been conservative on our projections for income and liberal on our expenses, and we have a lot of projects that have not been initiated that we thought would be. Nevertheless, the balance is about 28 million dollars. But the 28 million dollars being spent doesn't touch the shortfall that we have. The last thing Abbott wants is a big balance in the street fund and then the city wants to use it for other purposes.

Bills-Strand noted that LES charges an "aid to construction fee" for development of commercial and residential. Does the water system charge something similar to help cover costs? Ecklund acknowledged that there is a small fee charged by LES but it is significantly less than the water and sewer fees. We need some comprehensive financial planning for the utilities in this city. The impact fees will raise enough to get 10% of the backlog. Why adopt 10% when the LES model is out there?

Ecklund then submitted **Exhibit 3**, a list of 16 questions brought forward by HBAL for consideration.

**PRESENTATION BY LINCOLN CHAMBER OF COMMERCE AND DOWNTOWN LINCOLN ASSOCIATION - Support**

**9. Bruce Bohrer** testified in support on behalf of the **Lincoln Chamber of Commerce**, and submitted **Exhibits 4 and 5**. Bohrer began the presentation with a point of agreement. He

had talked to Mr. Ecklund and heard his proposal and had hoped to get a copy before the Chamber Board met on September 12<sup>th</sup>, but Ecklund was not comfortable sharing it at that point. The Lincoln Chamber of Commerce supports the impact fees ordinance as introduced, but also included in the Chamber resolution (**Exhibit 5**) is the fact that the Chamber reaffirms its support of greater use of bonding for infrastructure needs and necessary rate increases in water and wastewater. The Chamber supports development of the Infrastructure Financing Strategy business plan as far as looking at management structures and best management practices. This is a very complex problem that we have in front of us and to leave any stone unturned would be a mistake. The Chamber also supports the exemption of developer agreements and supports a comprehensive solution that includes reasonable impact fees for collecting off-site costs for new development, provided that there is a commitment from the city to develop and adopt other financing components on a timely basis. Bohrer cited quotes: "Cost is the father and compensation the mother of progress". "A house divided against itself cannot stand".

The Chamber believes very strongly that growth is beneficial and has had a strong pro-growth agenda. He quoted from the Chamber President, Paul McCue, "We want to see Lincoln grow and we've been telling the city to get ahead on infrastructure for as long as I can remember. The simple fact is, we have to find a way to pay for the growth that we seek and we have to allocate the responsibility for funding infrastructure needs in a balanced way".

Bohrer also submitted letters of Board members, Gene Brake, Marc LeBaron, Roger Severin, Brad Korell and Mark Hesser (**Exhibits 6, 7, 8, 9 and 10**). These letters discuss the need and this very complex issue. Bohrer believes we do have a current impact fee system, i.e. the negotiated exactions (developer negotiations). It has been alleged to be unpredictable and unfair. He believes this issue has been lost in this debate. Some people want to think that there are no impact fees now, but there really are. They're just kind of collected on an ad hoc basis and sometimes on a basis that some people would question about the fairness. Bohrer also pointed out that no one has said that we do not have a problem. We've got is an issue of how are we going to pay for the infrastructure. He agrees with 90 million dollars on roads, 20 million dollars on water and 40 million dollars on wastewater.

As far as Mr. Ecklund's presentation and the alternative to use more bonding, Bohrer has been in presentations with the city's bond counsel and the bond counsel did not feel comfortable making a recommendation as much as Ecklund. Bohrer would like to take a closer look at Ecklunds' proposal with a full presentation to the Chamber members, but there are a few things that Bohrer believes have already been investigated.

The Chamber has developed their position with a review of their infrastructure committee, which includes a broad range of people and a broad range of backgrounds and sectors in our community. It has also gone to the Chamber Board and there was a great deal of debate.

Bohrer concluded, stating that the Chamber is intent on being a constructive and positive force in building Lincoln and shaping a solution to this problem. He reiterated that the simple fact is that we have to find a way to pay for the growth that we want.

Bohrer does not believe anybody is going to stand up and say they want to pay more. A lot of the Chamber members who are current business owners might perk up pretty quick with higher utility rates. We do have to be concerned about taking a balanced approach. The problem is that we do have a shortfall, and he believes that everyone will agree that this is a problem.

**10. Gene Brake**, testified as the 2002 Chair of the **Lincoln Chamber of Commerce**. He presented the Chamber's resolution and urged the Commission's vote to support the Mayor's impact fee proposal. The Chamber has been involved in several efforts at building consensus at how best to pay for the growth that we seek. In fact, the Chamber's focus on these issues dates back to 1999 when the Chamber originally passed an infrastructure resolution suggesting that the community needs to identify creative financing options to aggressively fund infrastructure improvements. The Chamber supports a reasonable impact fee as part of a comprehensive solution for funding infrastructure, if the city is committed to adopting other financial options to close the infrastructure gap. The city currently assesses a negotiated exaction for off-site improvements. This exaction is similar to an impact fee, but is done on a subjective and unpredictable basis. In addition, both sides seem to be unhappy with this process. Clearly, it has lengthened the time for completing projects. The Chamber also understands that infrastructure situations require that we develop a comprehensive infrastructure financing business plan that includes a thorough review of current practices and management structures. It is imperative that the city move quickly on the remaining pieces of the infrastructure financing strategy.

**11. Greg MacLean of HDR**, testified as a representative of the Chamber of Commerce Infrastructure Committee. The Chamber of Commerce supports the proposed impact fees ordinance as one part of an overall infrastructure financing plan. We recognize the significance of the fees as part of a more efficient and equitable method of managing, implementing and funding capital expenditures for public infrastructure needs directly resultant from new development. We believe the success of the city's infrastructure financing plan must include not only reasonable, dependable impact fees but other carefully planned and creative funding mechanisms, reimbursement ordinances and possibly even operating managerial procedures to assist in the plan. MacLean suggested that impact fees are the "corner sky piece" of the puzzle. We need to put that down first. We don't know where it is going to lead, but we know that is one of the most important parts. We've got to get that out there on the table before we can move forward. If you don't take it out of the box, you'll never get started.

MacLean speaks from experience. With the exception of Duncan Associates and possibly one or two other people in the room, he is not aware of anybody else that has direct

experience with impact fees. He spent the majority of his professional career in the State of Texas and represented communities in development and implementation of impact fees. They were significantly higher than what is proposed here today. It has been his observation that in each of the situations he has witnessed, the fees were bitterly opposed at first in every case. In fact, the National Home Builders Association showed up at every one of the public hearings. There were threats of stopping development and threats of affecting affordable housing. Without exception, the development that did occur after the fees were implemented was accelerated. There was not a decrease in development that occurred. The fees that were adopted were based on a maximum fee that was calculated through a very rigid set of requirements that the state statute allowed through a public process and public hearings. Once the maximum fee was calculated, then it was up to the public officials and the community as a whole to decide whether they wanted to enforce that maximum fee. In most cases the maximum fee was not implemented. It was usually somewhere around half. Can impact fees work? The answer is absolutely yes. Are there downsides? To be sure, there are. There are concerns and they cannot be the sole funding source. You have to make it part of a comprehensive plan. The process is what gives it validity. It has to be documented. The Duncan report followed a very similar path that was used in other states. It is defensible and probably very conservative. If it is challenged, you have to be able to go to something more than national average numbers to support what you are doing. The Duncan report uses commonly accepted engineering planning principles. These are industry standards that are nationwide.

Should the city adopt \$9,000 in fees? Probably not. MacLean is pro-growth. He's all for it. But when you have growth, you have to fund the infrastructure that goes with it. The question is: Who pays and what is fair? He suggests that the answer is somewhere in between. MacLean worked with many communities in Texas--Louisville, Lancaster, Dallas, Plano, and Richardson, among others.

**12. Tim Thietje** appeared as chair and on behalf of the **Downtown Lincoln Association (DLA)**. Thietje serves on both the DLA Board and the Executive Committee, and is currently chair of the DLA Antelope Valley Advisory Committee. The DLA previously submitted their position. The DLA first became engaged in the impact fees issue in May of this year when it learned that the Downtown and Antelope Valley would be affected by the city's proposal. Since May, the DLA staff and Board have spent a great deal of time in analyzing the city's proposal and in talking with other Downtown organizations in similar situations to reach a consensus. In June the DLA Board unanimously adopted a resolution expressing a number of concerns with the city's March 19<sup>th</sup> proposal. This resolution was shared with the Mayor and staff. On September 10<sup>th</sup>, the DLA Executive Committee unanimously adopted a statement based on the City's August 26<sup>th</sup> revised proposal. The DLA resolution was read into the record:

DLA commends Mayor Wesely for leadership and focusing the community on important issues we must face regarding the funding of infrastructure to support continued growth. As stewards of Downtown Lincoln and advocates for continued revitalization of older commercial areas of the City, including Downtown and the Antelope Valley, we thank Mayor Wesely and the city staff for recognizing the unique redevelopment challenges faced by these areas in their most recent impact fee proposal. The August 26, 2002, proposal addresses many of the DLA concerns in the city's earlier proposal, and respects longstanding public policies which have sustained the economic vitality of the core and older commercial areas of the city.

Based on the August 26, 2002, proposal, the DLA: 1) supports the concept of impact fees as one component of an overall infrastructure financing strategy which is needed to insure Lincoln's continued growth and economic vitality, with the understanding that Downtown and Antelope Valley will be subject to water, sewer and park/trails impact fees, but excluded from arterial street impact fees and from use of arterial street impact fee funds in these areas. As home to the State Capitol, University of Nebraska-Lincoln main campus and numerous state attractions, Downtown streets are utilized for many public purposes. Likewise, longstanding public policies have encouraged the concentration of activities and traffic in the Downtown area; 2) supports the creation of a working committee to develop a comprehensive infrastructure financing strategy and business plan which includes a comprehensive review of potential revenue sources and projected expenditures, including but not limited to, impact fees to fund our continued growth. The DLA requests representation on the working committee. We urge that the committee's charge include a review of public resources and financial incentives currently used to stimulate revitalization in Lincoln's older commercial areas as well as research of funding tools and redevelopment incentives used by other communities. We pledge our support and assistance in the effort. We believe that it is possible to identify additional tools and incentives which will enable Lincoln to maximize mixed use redevelopment opportunities in Downtown, Antelope Valley and older commercial areas for the benefit of our entire community.

While the DLA has a very specific focus and purpose, i.e. to make sure that the Downtown core area of the city remains vital and strong, the DLA recognizes and fully supports and wants to be a part of making sure that we have a strong growing community. We need a strong Lincoln and a strong economy to have a strong Downtown.

#### Questions

Steward inquired whether the Executive Committee discussed with the city the exemption of Antelope Valley in the context that it has previous planning just as previously platted projects might have. Thietje indicated that they discussed Antelope Valley as being an area that is vital to be redeveloped. Being an older area of the City and part of the core area of the City, we felt that area had the same interest and focus as the rest of the core. Steward believes that



Antelope Valley has a distinct definition through the planning process so it could be defined differently than the definition boundaries that the DLA has agreed upon. Thietje concurred. Steward asked whether this was specifically discussed with the city. The answer was “no”.

Steward inquired whether the DLA has analyzed the downside to a total district exemption. Thietje indicated that the DLA has given a great deal of thought to the overall proposal. We first learned of this in May. We have additional work that we would like to do. As we look at the core area and look at the challenges that area already faces in terms of redevelopment, there are a variety of reasons that the DLA felt strongly that the upside potential of that exclusion is far greater than any negative downside impact. We talk about the negative downside in terms of the political ramifications in the community. DLA wants to have a strong relationship with other groups, but they felt it was very important that there be a recognition that the core area of the city not be subject to the same fee structure because the core area is very much a public place and is impacted by a great deal of traffic on the arterial streets. The DLA believes that as a public area, the costs should be borne by the city at large. We also recognize that also means that the Downtown area would not receive impact fees from other areas of the city.

Schwinn asked whether Thietje would be standing here in support on behalf of the DLA if the DLA had not been exempted. Thietje's response was that DLA believes that the impact fee structure will be part of any ultimate plan that is adopted and the DLA is comfortable with the levels that have been proposed. Whether or not the board would have directed him to be here today without an exemption, he did not know.

### **PRESENTATION BY THE REALTORS ASSOCIATION OF LINCOLN - Opposition**

**13. Rita Griess**, testified as the 2002 President of the **Realtors Association of Lincoln** (RAL), and submitted the position statement of the RAL on Infrastructure Financing and Impact Fees (**Exhibit 11**), drafted on September 5, 2002, in response to the August 26<sup>th</sup> proposed ordinance. RAL believes this ordinance as proposed represents only a partial solution to the total impact fee needs of our community. RAL does oppose the ordinance as drafted until such time as certain concerns of RAL have been met. RAL is requesting that the Mayor's office provide a complete, detailed outline of the City administration's public commitment to immediately utilize additional revenue sources, including the maximum amount of revenue bonds available, general obligation bonds, water and sewer rate increases beyond the proposed scheduled increases, wheel tax and gas tax. It is very clear that this is a complicated issue that needs broad-based funding. As of now, all we have as a solution to the additional funding is the commitment to appoint a committee to look into additional revenue sources. We already had a committee that was to have looked into those avenues.

The future use of revenue bonds and general obligation bonds has only been suggested by the administration in relationship to water, wastewater, fire, and sidewalks, but not for street construction. It is also necessary to address the avenue of raising a greater portion of

gasoline tax receipts and she knows the city has committed to do that. But that is going to be subject to the State Legislature so the future of that is certainly not well defined. The biggest challenge we have is in the construction of streets. As of this date, there is no public commitment by the administration to consider an increase in wheel tax. That is a source specifically earmarked for street construction. We need a complete solution to the funding and not just a process defined.

If impact fees are going to be a part of this solution, there is a need to take a look at street construction and design standards. RAL is not trying to insinuate a design to handle less traffic, but perhaps we do need to take a look at some of the optional features if we can't afford to pay for them. If we have beautiful streets designed to have plantings, but they are left with dandelions, maybe it is better not to do that. We need to take a look at priorities and what we are sacrificing to have great, more beautiful streets.

With regard to the specific language in the ordinance, RAL is concerned about where the impact fees that are going to be collected would be spent. We are looking right now at four quadrants in the city and RAL believes the areas should be smaller and more defined. Home buyers and businesses paying impact fees deserve to have those spent in their neighborhood, not 8 or 10 miles away.

In summary, Griess stated that RAL wanted to take a constructive approach in their opposition. It would be easy to flat out argue against the ordinance based on the local economy, jobs and street construction funds mis-management over the last 20 years. But rather than do that, RAL wants to recognize the full problem with infrastructure financing which the city faces, especially as it relates to street construction. This ordinance is not going to solve the shortfall of 90 million over the next 6 years. We need a comprehensive solution to our infrastructure needs. The goal of the RAL is that an entire solution to our infrastructure financing needs to be mapped out in detail, and this comprehensive solution creates a situation where infrastructure improvements will keep pace with the development of the neighborhoods.

**14. Peter Katt**, testified on behalf of **RAL** and referred Item #3 of the RAL position statement. The street design standards is a really big issue. Mr. Abbott recognized this in his comments when he referred to the "golden" roads or the yellow brick road. It is important to remember that street design standards are an important component of our gap. The gap between what we can afford and what we can build is really composed of three components: What are we going to build? When are we going to build it? And how is it going to be constructed? The point to be made is that one of the ways to narrow the gap in this community is to take a look at what we are going to build and try to build it cheaper. While it may not be applicable to parks or water or sewer, our roads clearly are applicable. The question is: What roads will Lincoln be building in its future? The impact fee assessment and the gap that has been computed is based upon a very high road standard. There is not a road in Lincoln today

constructed to that standard. So, the cost that has gone into developing “the gap” for street construction, is fundamentally flawed because the cost is based on a road standard that is not in place today. Katt then referred to three items on the Planning Commission pending list that were deferred indefinitely with regard to implementation of the 120' arterial road right-of-way standards. Those standards that are proposed are what this position is based upon. At the time that these standards were proposed, Ray Hill of the Planning staff stated that one of the purposes of the 120' right-of-way standards “...is to improve the appearance of the city on our outer fringe areas”. For the city staff to take the step and suggest that roads need to be pretty when we are seriously behind in road needs, a more prudent policy direction should be taken.

The city staff position on roads is much like investing in a brick facade for your home and landscaping your yard when the roof is leaking and the foundation is crumbling. Which has a higher priority?

Katt then referred to Item #4 in the RAL position statement regarding the benefit zones. The benefit zones proposed are clearly too large and will be subject to political pressure as to the projects that are chosen to be funded. It is fundamentally unfair for a person to pay an impact fee and then receive absolutely no benefit. Katt then provided some suggestions to consider for benefit areas. The standard that we are asking for parks is based upon a neighborhood park standard per section mile. That should be the benefit zone. Base the benefit zone on the section. With regard to water and sewer, Katt observed that we don't develop water and sewer city-wide, or very few of our improvements are done city-wide. They are done in basins. So take basins and subbasins as the benefit zones that should form the cornerstone of the benefit areas. And finally, with regard to streets, why wouldn't we build the benefit zones for streets on a traffic zone map? For fees collected within one traffic zone, the expenditure would need to be made for traffic improvements or road projects that provide capacity improvements or improvements to the traffic zone from which the money was taken. That's what computers are for. That's why we have this fancy traffic analysis. Let's use tools that we have today to more closely align the amount of money that is being taken to the benefits that are going to be provided. If you want a simpler approach, you could apply roads to the sections. Take money from the section and apply it to the arterial fringe section line roads.

Katt then addressed Item #5a of the RAL position statement which asks for clarification of which developments will be exempt. There is a number of different areas for exemptions that have been added in since the first draft. One of the areas that has been added is categorical exemptions for annexation agreements. Why not identify them and attach a list? Why should people be left to guess whether or not they are going to be exempt. There is no definition of annexation agreement. Why limit the exemption to annexation agreements? There are other agreements and conditions of approval where developers have paid or contributed to “impact fee facilities”. Why the choice to be so narrow in terms of the categorical exemption to annexation agreements? Let's define annexation agreements--let's consider expanding the definition to fairly pay back those people that have invested in the impact fee facilities in

advance. Katt also pointed out that the ordinance talks about “written mitigation agreements” and he doesn’t know what that is.

With regard to Item #5b of the RAL position statement relating to amendments to insure that developments which construct improvements (in fact, loan money to the city) will have all costs of such improvements reimbursed. This is “post-ordinance developer agreements”. One of the problems with that is, if a developer enters into an agreement, the only source of reimbursement that they have is from within their own development. So if they build an arterial section line road that benefits a project across the road, it is outside “the development” and impact fees that the development across the road pays for arterial streets will not be available to reimburse the developer that built the road. This is fundamentally unfair. That needs to be fixed. In addition, there is no definition in the ordinance about the priorities for distribution. Does the developer that put up the money and got the road come first? Or what if the city has a fancy new project that they want to get done with the impact fee money? What are the priorities for distribution of the impact fee funds that are collected? That needs to be addressed in the ordinance.

Katt then discussed Item #5c of the RAL position statement regarding how long the city has to spend or encumber money. “Encumbered” is a pretty fuzzy term. First of all, 10 years is a long time. If the money hasn’t been spent in ten years, forget it. Let’s not worry about encumbered. He doesn’t think we need to further define, just eliminate it. And where did the 10 years come from? That could probably be shortened. Let’s have the city’s obligation to spend the funds tied into the CIP structure—six years—that would seem to be a reasonable amount of time. There has been no justification for the 10 year period on spent or encumbered.

Item #5d of the RAL position statement refers to tracking and notification of fee payer. This is for refunds to people entitled. What process is the city going to follow? We need a definition for “fee payer”. Who is the fee payer? Is it the developer who got a credit? Is it the home builder that paid or advanced the fee? Is it the first occupant of the home that actually paid him? Was it the homeowner who first occupied the property? Who is entitled to the refund? Who is the fee payer? There is no definition in the ordinance whatsoever. Also, does the fee payer get notified by the city and then they have to file an application to get a refund? Why make it that complicated? If they’re entitled to the money, sent it to them. Let’s fix the ordinance and make it simple for people who have paid their money and are entitled to a refund. Refunds should be automatic and the refunds should be assignable. A person who is entitled to it should be able to assign and transfer that right to a third party. How many people do you think are going to keep track of the impact fee money that they paid 10 years ago? It’s going to get lost.

With regard to projects outside city limits, Katt believes that is generally answered by the fact that the ordinance will only apply within the city corporate limits. But one of the problems with

that is, what does that mean then if you have a project that requires an impact fee facility that has benefits to property outside the city, e.g. section line roads, a sewer line that goes outside the city and comes back in; a water line that temporarily goes out? How are those addressed? Katt does not read anything in the ordinance that covers that.

Katt observed that the Planning Commission will be one of the few groups in the city of Lincoln that will take the time to read this entire ordinance and think about it. We have tried to do that, but every time we read it again we come across new things, new questions, how is it going to work, how is it going to operate, is it fair, does it even match what the administration has said? And it's really hard to tell whether or not it does because it keeps changing and the administration's position keeps changing, so it's a continual challenge. If the Commission passes this ordinance along, Katt urged the Commission to be sure that it does what they think it is supposed to do.

Katt also pointed to one other large area that is not very well thought out and doesn't work very well--low income housing exemptions. How are those income determinations going to be made by the city? Will money be paid to the city and then refunded after occupancy is verified? Currently in the ordinance, you're not entitled to the exemption for low income housing until after the unit is occupied. Even for all of these low income projects, they're going to apparently take out a building permit, pay their money, get it built, have all that capital invested, someone moves in and then they are going to have to verify to the city. This is not a very efficient system. Then once occupied, is the unit freely transferable to a higher income individual? Does the new unit owner or owner of the rental unit which converts to a pay level have to reimburse the impact fee? What happens? Is this now just a free impact fee unit in the city?

If impact fees are eventually a part of the total solution, Katt submitted that this ordinance would need to be substantially reworked in order for it to answer a myriad of technical issues and questions on its application and enforcement. It is clearly a first draft--not a finished product. Parts of what has been said have not made it into this draft. When we decide what we want to do, the ordinance will need to be redrafted.

## **GENERAL PUBLIC COMMENTS**

### **Support**

**15. Russell Miller**, 341 So. 52<sup>nd</sup> Street, submitted **Exhibit 12**, which is the same letter he submitted in late July. He is in favor of the impact fees. There has been a lot of testimony about affordable housing and how impact fees will make it less affordable; however, the consequences of no impact fees can only mean increased taxes and services or no new housing development because there won't be any more money to bring the streets out there. Miller pointed out that the increased taxes and service fees will put any retired or fixed income person at the risk of losing his house. If the solution is to do a lot of bonding, all that can do

is raise my taxes or service fees. Miller pointed out that his 50 year old house has bought and paid for two sewage treatment plants, many miles of water lines from Ashland and countless miles of streets. If the new houses want to join this party, then they should put matching money into the pot. **Exhibit 12** explains Miller's reasons to exempt industrial zoning from the impact fees. He is in favor of the full \$9,000 for residential homes; however, with regard to industrial, there are two types of jobs: primary jobs, such as Goodyear and Burlington Northern, or in other words, manufacturing, and there are secondary jobs, such as Walmart or retail type industry. The secondary jobs exist only because the primary jobs are located here in Lincoln and not in Omaha. We need to protect and enlarge the primary jobs, and the secondary jobs will take care of themselves. Miller fears that home grown manufacturers will not be able to pay the impact fee as they try to expand into a different location. They will locate some other place. The industrial uses should be exempt because they are already being taxed twice, via the equipment tax which is legally defined as a personal property tax. The equipment tax is at the same rate as housing real estate taxes. An acquaintance of his has a \$750,000 milling machine and this thing pays the same tax as a regular house, but this milling machine does not impose any fees or impacts in the form of schools, water, sewer, etc. It just sits there and pays taxes and is basically paying three or four times the amount of tax as a conventional house. This is why the industrial area should be exempt. The Commission needs to protect the retired persons and also protect the formation of primary jobs.

### **Opposition**

**16. Steve Fulton**, 440 Lakewood Drive, area home builder and Senior Vice-President of HBAL, testified in opposition. He builds homes in a wide price range. Most of his buyers are move-up buyers. He primarily builds homes that are over \$275,000. Most of the buyers of his homes are buyers that move into town, move-up buyers, and buyers looking for the opportunity to move up and get a house that they can upgrade for their family. The proposed impact fees for this price range could possibly be absorbed into the price range for these move-up buyers, but he believes we need to take a closer look at where these move-up buyers come from and more importantly, what are the jobs that these move-up buyers have. We've all heard the stories about Gallup moving to Omaha, Cushman, and Square D. Lincoln does not have a great track record in attracting and retaining business. The proposed impact fees will have an effect on the commercial and the retail businesses that are wanting to move into Lincoln or to expand their current businesses. This will mean fewer move-up buyers and fewer jobs for the affordable housing market. Lincoln's current growth rate is 1.6%, and this is not explosive. This is simply stable growth. The information he has come across and the studies that he has seen concerning impact fees rarely show that kind of growth. Most he has seen talks about growth in excess of 5%, 10% and 20%. A lot of these cities enacted impact fees to reduce growth and there are studies that back that up. At 1.6% he is wondering if we should be considering impact fees as a way to control growth.

The question Fulton has is: How will Lincoln attract the good quality jobs into the community? For example, would Kawasaki have paid the hundreds of thousands of dollars in impact fees

for that trolley car addition, or would they simply have gone to a more business friendly community? Fulton believes that this negative proposal can be changed into a positive situation. We could be a shining example. We have heard some alternate solutions. This is something that needs consideration. We acknowledge that there is a 90 million dollar budget deficit, but at the same time we need to have a close look at how the jobs that come into Lincoln are dealt with.

We are extremely fortunate to have the kind of people in our community that have compelled themselves to be here today. All of these ideas need consideration. Fulton is confident that with all our input together we can arrive at a plan that will move Lincoln into a positive direction.

**Neutral**

**17. Glenn Friendt**, 3901 So. 27<sup>th</sup>, Unit #9, stated that he is not opposed nor in support of impact fees, but he is here to bring a perspective he has not heard expressed. He lives in an older home. He is a neighbor. He lives in a neighborhood. And he absolutely believes in each citizen's obligation to pay their fair share, and only their fair share, to provide quality services, protect our quality of life and to sustain the vitality of growth. The problem is that he cannot tell what his fair share is going to be based on the proposal before the Commission. As we have heard, impact fees will only take care of 10-12 percent of our shortfall, and the rest of it is wide open. That concerns Friendt. Many of the business leaders, organization leaders, DLA and the Chamber of Commerce who have suggested that this is a very complex issue that requires a comprehensive plan, would not accept in their own organizations an extensive capital investment program where only one piece of it was defined, and neither should this Commission. Friendt believes that this decision should be put on hold until the rest of the infrastructure finance planning is provided. He believes that process can actually help develop consensus about what should be paid, who should pay it and how that works for the benefit of the total community.

Friendt then created an analogy to emphasize his point. Imagine that I'm a developer coming before you to ask for a new development. We've got some property selected and it's committed and we're ready to go. We've got a rough plan of how this will all lay out and come together; we even have some architectural renderings that show how this might look—we think it's going to be stunning--and there are two important creative differences in this approach that he calls "blue sky development". One is a construction technique using a component called air headers which allow us to put up the roofs before we do anything else and move very, very quickly. The second part of this is very creative and allows us to move very quickly—if you will accept these plans that I have showed you and allow us to move ahead and annex the property and invest in the infrastructure, we will deliver a final plat, site plans, engineering drawings and architectural drawings after we get the building permits. So what do you say? Friendt knows what the Commission says when most developers come before the Commission and the

Commission requests traffic studies, all kinds of detailed drawings and lists of very specific details about how a development should be done because we want to protect the quality of life here, we want to protect our neighborhoods and we want to provide people with great places to live.

Friendt suggested that to move forward and do something else without having a full picture of infrastructure financing would be foolhardy.

### **Support**

**18. Craig Groat** testified in support and quoted from Standard and Poors, "The way to promote economic growth is through education--a quality educated work force and improving quality of life." One of Groat's main concerns is that developers, builders, etc. get so focused on their bottom line that they actually lower the quality of our city, and by doing so they lower our average income and actually lower the possibility of people purchasing their properties. It has a very negative effect. Groat spoke with a former president of the American Planning Association, and he mentioned that these impact fees have primarily been put into effect in areas where they have a high rate of economic growth along with tax limitations, such as in California, Florida, etc. They become quite well accepted by the developers. The only thing is that you have to educate them. He has mentioned at the Mayor's Neighborhood Roundtable that we need someone in our city that is highly qualified to educate the developers on the advantages of impact fees and that has not occurred. These impact fees can be very positive for our city. They are a necessity, also taking the burden off of the homeowners. The Realtors who get their primary income from previously existing homes should focus on that, also.

Groat noted that a statement was made earlier today that FHA and MGIC would not finance impact fees. FHA in Denver stated that it is a given that they will finance impact fees. The comparables have to be within the last six months in the immediate area. Same with MGIC. As far as legality of impact fees, the laws have to be very tightly written and they have to apply to very specific areas, otherwise they will not be held up by the courts. Groat does not believe that putting things into quarters will work. We need to take a step back and look at this whole thing again.

Groat believes that Duncan Associates did an excellent legal analysis in finding that Nebraska does have implied authority for impact fees.

Groat also noted that the city school system does not have funds to purchase land right now for facilities. He understands that LPS requested to be part of this study and they did not even receive a reply. Our school system does not have the legal authority to require the donation of land. As per Duncan Associates legal analysis, Neb.Rev.Stat. §15-901, .."The city of the primary class shall have authority within their area to prescribe standards for laying out subdivisions in harmony with the Comprehensive Plan, to require the installation of improvements by the owner by the creation of public improvement districts or by requiring a



good and sufficient bond guaranteeing its installation of such improvements and to require the dedication of land for public purposes.” The City of Lincoln can do that through our school system but they have been ignored and he does not believe that is very responsible.

Also, in the Duncan Associates report, they have stated that developers at this point may already be paying as much as \$3,000 per single family unit. The proposal is actually to start off at \$2,500 so that may actually be lower than what they are already paying. Groat stated that he could not depend on the figures that were provided by the City. He had requested at the City Council meeting that our city finance officer do a study on these impact fees. Groat believes the impact fees can be very advantageous to our city, taking the burden off of our older areas. He has been waiting for his sidewalk to be repaired for 12 years. A lot of money that should have been put into our older neighborhoods has gone to newer areas. All of this lowers the quality of life in our city. If developers look at other cities that have impact fees, they would find that those cities are some of the fastest growing with the highest quality of life and quality businesses.

\*\*\* Dinner Break \*\*\*

**PRESENTATION BY THE FAIR SHARE ALLIANCE - Support**

**19. Karen Kotschwar**, 5000 West Hughes, testified in support on behalf of the **Fair Share Alliance Board** and as a member of the **Arnold Heights Neighborhood Association Board**. The Fair Share Alliance consists of concerned citizens from Lincoln’s neighborhood associations who have come together to advocate for the adoption of a fair and balanced system of financing the development and maintenance of our city’s public infrastructure. At this point 14 neighborhood associations have passed resolutions supporting the concept of impact fees to pay the cost of public infrastructure required to support new development.

Kotschwar then shared the positions of the Fair Share Alliance. The Fair Share Alliance believes that impact fees are necessary to pay for the costs of Lincoln’s growth. The city’s current system of financing infrastructure development and maintenance has not worked in the recent past and will not work in the future. Lincoln faces a 290 million dollar budget gap over the next 10 years in infrastructure financing. Fair Share Alliance believes that all Lincoln citizens should pay their fair share of the cost of Lincoln’s growth. A balanced system is needed to finance our projected infrastructure development and maintenance costs.

The following principles should be included: It should be reasonably predictable in terms of costs, revenue and delivery of services. It should be fair and equitable. It should be balanced in a manner such that those who receive the most benefit should pay the most costs. It should be phased in to mitigate economic disruption. The Fair Share Alliance believes in strengthening Downtown and existing neighborhood business districts and protecting single family, low income housing.

To insure Lincoln's healthy future, the Fair Share Alliance endorses the following: Impact fees must be implemented to help pay for Lincoln's growth. Impact fees should reach 100% of the capital costs of growth within 3-5 years for water, wastewater, streets and neighborhood parks and trails. As part of a phased-in approach, the initial impact fee should be no less than that required to generate the aggregate off-site infrastructure financing provided by the current system. Developments already platted and annexation agreements already in place should be included in the impact fee structure. Consideration and credit should be given to off-site infrastructure costs already negotiated and paid.

Downtown should be considered for exemption as a specific redevelopment area. Existing neighborhood business districts should be examined on a case-by-case basis as candidates for exemption as redevelopment areas. Funding mechanisms must be created to minimize the impact of any changes on single family, low income housing.

**20. Larry Zink**, current president of the **University Place Community Organization** (UPCO) and Board member of the **Fair Share Alliance**, testified in support. His testimony is also found on **Exhibit 13**. UPCO is concerned about the drain of public resources from existing neighborhoods to support the infrastructure development needs on the fringes of our City. It is because of this concern that UPCO was one of the first neighborhood associations to go on record in support of impact fees and UPCO has been active in the Fair Share Alliance since its inception.

Impact fees are clearly a public financing issue, but they also have significant public policy considerations and implications for our city's long term health, growth and character. Zink believes this is the appropriate forum to lay to rest the assertion that some have made that those of us who support impact fees are trying to divide our community. Our nation has a long and established legal and public policy tradition that incorporated communities have the right and indeed the responsibility to define the conditions under which new areas will be accepted into the corporate city limits. The areas that would be most impacted by impact fees are outside our city's current corporate city limits and they will be seeking to be incorporated into our city. The current public policy debate is not an attempt to divide the city, but instead it is a public stewardship discussion of the conditions under which the incorporated city should accept new areas and assume new responsibilities for the long term maintenance of public infrastructure and the provision of services for those areas. The Planning Commission is the public body entrusted with shepherding this public planning process.

For the Commission's consideration, Zink raised the fundamental question of why scarce public resources should be used to subsidize private development on the outskirts of our city. The City's Infrastructure Financing Study Advisory Committee, after studying this issue in-depth, concluded in their final report that growth does cost the existing community. The Duncan Associates study concluded that the net capital costs for the city to provide the average new single family dwelling with arterial streets, water, sewer and neighborhood parks

totals in the area of \$9,000. If our city does not institute a system of impact fees, the citizens of Lincoln will be subsidizing private development primarily on the outskirts of our city, to the tune of approximately \$9,000 for each single family dwelling developed and sold. Zink believes that public subsidies of private ventures are to be avoided unless there is a compelling, overriding public good or goal that justifies that subsidy. Under our current system, the city effectively provides huge subsidies to private development on the outskirts of our city by paying most of the cost for the off-site infrastructure necessary to support that development. Impact fees provide a means to end or at least significantly reduce this subsidy.

Zink then discussed some of the widely shared goals of good community planning and explored how these subsidies might or might not contribute to the realization of those goals.

1. Maximization of use and return on existing public infrastructure investment.
2. Encourage reinvestment in and maintenance of our existing neighborhoods and seek to avoid the problems of decaying inner city neighborhoods.
3. Maintain the healthy neighborhood businesses and services within our existing neighborhoods.
4. Promote smart growth policies of energy efficiency, environmental stewardship and healthy self-contained neighborhood groupings.
5. Protection of the low-income citizens.
6. Promote jobs and the local economy.

(Also see **Exhibit 13**). Zink concluded his testimony, reiterating that the Planning Commission is the public body entrusted with the stewardship responsibility for guiding our community's long term growth, health and overall character. Impact fees used in a reasonable manner can further these aims. The proposed ordinance is consistent with both the Comprehensive Plan and sound community planning principles. Adoption of the proposed ordinance would provide public policy makers with another tool in their efforts to shape an overall balanced approach to infrastructure financing. UPCO joins 14 other neighborhood organizations, the Fair Share Alliance, the DLA and the Chamber of Commerce in urging this Commission to support the impact fee ordinance.

**21. Jeff Tangeman**, 1144 Peach, testified in support as Vice-President of the **Everett Neighborhood Association** and as a member of the **Fair Share Alliance**. Tangeman pointed out that in his lifetime, Lincoln has almost doubled in size. He remembers when Trendwood, Southwood and the Highlands were nothing but a single house perched on a hill. Lincoln has always been a vibrant expanding community, drawing the best of Nebraska, the

best of the nation and now the best of the world to its expanding boundaries. While he works in the Omaha area, he has expressed his faith in the future of his home town by becoming a homeowner in Lincoln. He noted recent articles in the newspaper by those who say that “growth pays for itself” is a reason not to have impact fees to cover the costs of new infrastructure. Where is the evidence to support that statement that “growth pays for itself”? One cannot make an unsupported statement in the hope that saying it enough times will make it so. Where is the documented proof? If he had made such an assertion on any assignment in his long academic career, either on the undergraduate or graduate level, it would have been red circled with very large “your opinion” or “is their proof of this statement” written right next to it. While the end product of new housing and commercial development will pay its share of property taxes, money must be found to continue connecting new construction to city water and sewer and to expand the network of arterial streets.

Since Tangeman became aware of this issue, he has read that if things stay the way they are, Lincoln will experience a deficit of 90 to 290 million dollars in the next decade to maintain existing infrastructure. We are asking that those responsible for the development pay their fair share of the infrastructure costs for their developments. We are not against growth. He realizes that not everyone wants to experience the joys of living in an older home in an older neighborhood. We need new commercial and housing development in Lincoln. We need new commercial development in Lincoln to give our citizens more choices on where to spend their money. Development is the necessary part of making the city a better place. He does not believe that instituting an impact fee will slow economic growth. Lincoln is a place where people want to be. Since people (consumers) want to be here, businesses most certainly want to be here, and successful businesses create jobs and bring in more people. While we should make it as easy as possible to build a house or erect a shopping center, we must remember that water and sewer lines do not install themselves, nor do major streets magically become multi-lane arterials overnight. To those that say that impact fees will drive development to other communities in Lancaster County, Tangeman posed the question: If Lincoln can’t afford to subsidize the developer’s share of the cost of development, what makes you think that Waverly or Firth can? Please vote for the impact fee ordinance.

**22. Vera Mae Lutz**, 3915 Apple Street, testified in support as a voice from a fixed income and a senior citizen with gray hair and a slight limp. Fixed income residents need representation and consideration. This classification of citizens has and will always pay their fair share. They are not against growth but do want quality of life with clean water, safe place for wastewater, open spaces for parks and trails. More taxes is not the answer. Fixed income people understand and practice diversification. Most senior citizens live in quiet neighborhoods where their children grew up. They want to continue to live in quiet neighborhoods. Impact fees (or some other word that gives the same results) was discussed 15 years ago when she served on the water/wastewater task force when Lincoln added to the water plant at Ashland. There was an outcry when we proposed a 5% increase in water rates. We heard the same statements that we hear today. Diversify is the investors advice of the

21st century. Impact fees is a way to change the mix of funding infrastructure. Growth is positive if costs are controlled. Those who receive benefits should pay for those benefits--fair share. The Comprehensive Plan includes major growth in all directions. This growth will require significant investment in infrastructure to develop properly. Is it fair that existing taxpayers continue to subsidize most of the growth? Impact fees can level the playing field by assessing the same amount to all. Impact fees are not new. Impact fees can be used to manage growth, urban sprawl abuses and inequities.

Revenue bonds are not the answer. Most senior citizens do not accept the philosophy of the credit card--buy now, pay later, with interest. Lutz requested that the Planning Commission adopt the impact fees. After the review that is planned in three years, if adjustment is needed, it can be made then and a century will not have passed.

**23. Corrie Kielty**, the incoming president of the **Hawley Area Neighborhood Association** and member of the **Fair Share Alliance**, testified in support. She has not seen the alternative proposal submitted by HBAL today. She pointed out that the City is not LES. We can't do things exactly the same way. She also believes that Lincoln has already adopted a business plan--she believes the Comprehensive Plan is a the business plan. During the Comprehensive Plan process, the publicity was about how much land we were going to develop, where and how much could we afford to develop. She believes the Comprehensive Plan includes plans for funding all of that development. She is amazed that all of the folks who were interested in this issue and who supported it in the Comprehensive Plan are now opposing what is in the Plan. For example, in the Comprehensive Plan under Water and Wastewater, it talks about establishing a connection fee in newly developing areas to be paid at the time of the building permit to recover a portion of the capital costs. Under Arterial Streets, it literally says that the community should establish a balanced system of financing improvements that uses both "impact fees" paid by new construction, wheel taxes paid by rate payers throughout the city, and state and federal funds. Again, it mentioned "impact fees" under Parks and Trails.

It is interesting to see all of the opposition for a variety of reasons. However, one of the interesting things she has never heard from the opposition is, yes, we all need to pitch in and we all need to pay a portion. The Fair Share Alliance knows that our taxes and/or our rates are going to go up. We know that's going to happen. That's a part of growth. She would like to see those opposed to impact fees say that they know they are going to have to step up to the plate. That would make her feel a little bit better about the issue. There are a lot of ways to fund this set forth in the Comprehensive Plan. One of them is impact fees, bonding is in the Comprehensive Plan and increasing rates is in the Comprehensive Plan. We need to take one step at a time and she believes this is a great first step. We're not looking at \$9,000. We're looking at a reasonable compromise.

**PRESENTATION BY THE LINCOLN INDEPENDENT BUSINESS ASSOCIATION (LIBA) - Opposition.**

**24. Connie Jensen**, testified in opposition as President of **LIBA**, and read into the record the Resolution dated September 12, 2002 (**Exhibit 14**). If the August 26th proposal goes forward, LIBA believes that two aspects need to be better defined: 1) The four “benefit areas” are too broad and a more direct benefit clause would be appropriate; and 2) Arterial streets are for the most part a city responsibility and the majority of the cost should be financed with General Obligation bonds and/or Revenue bonds. This is the most equitable method of financing a capital asset that will benefit all citizens.

LIBA suggests that impact fees are an uncontrolled tax levy that can be increased or decreased by future administrations without citizen oversight. The legality is being called into question and LIBA would like to see a definitive resolution prior to any potential court actions. LIBA opposes the current proposal but believes that it is the first step in what must be a multi-step process. LIBA supports the implementation of a working committee comprised of industry selected individuals to develop a more comprehensive solution to the problem.

**25. Russ Bayer** testified in opposition on behalf of **LIBA** and thanked the Commission for taking the initiative to have this kind of an open forum organized in such a manner that everyone gets to be heard. There is a gap and the gap needs to be funded. How do you fund the gap? It is a gap that this administration did not create and it's been around for 20+ years. The questions comes, why do we need to decide this today? Can we take six more months and maybe put together a process with this working committee and look at every single opportunity and put together a complete plan? Bayer supports the establishment of a working committee. The committee should do its work and then we should decide what to do about impact fees. Bayer requested that the Commission put this proposal on pending for six months and have the committee do their work so that we have a complete package in front of the community and the Commission. Bayer suggested that LIBA's position might be that we're afraid this may be the only step. Let's not have this step become \$2500, then \$4,500, then \$9,500, then \$15,000. Let's put the whole package together and control it.

**26. Joe Hampton** testified in opposition as part of the LIBA presentation. His testimony was also submitted in writing (**Exhibit 15**). Hampton served on the Lincoln City Council for 12 years, 6 years as the chair. He has resided in Lincoln for 55 years and has developed his own business over a 50 year period. Over that time, he has observed many events that have occurred in this community, many of which were good and some which were not so good. Hampton asserted that what is before this Commission today does nothing for the Lincoln economy. He relayed ten concerns:

1. We have fallen behind on our infrastructure needs because of the absence of any sound business plan to meet the needs for a total community.

2. A political effort is used to divide this community—not bring it together. When the buzz word of the day all across this town, state and country is “united we stand”, then if one segment of this community has a problem, then we all should have a solution. What is before the Commission today is not a solution.
3. Quoted from the staff report, “Without impact fees, the community has few viable or desirable choices. ....”. This community wants to find a solution but Hampton is not sure that this process has been receptive to solutions. The city asked four major groups within this community, i.e. Chamber, LIBA, Realtors, Home Builders, to sit down and discuss the concept of impact fees. We thought that this was in good faith—that they really wanted our input. We submitted what has now been called the “white paper” on December 5, 2001, which was somewhat broad in recommendations. We also submitted a paper on May 30<sup>th</sup> which is much more definitive. These were written suggestions which were given to the staff. Written answers were expected but none have been received. We need a business planner such as a CPA or people experienced in profit and loss operations to solve some of these problems. Lo and behold, we wanted to have a written response and would you believe I got back to the office at 5:00 yesterday and here was a partial written response faxed to me. And this is the way we explore all of the other alternatives?
4. Any plan should have the legal authority to do what is proposed. There is serious doubt that this authority is granted by the state for this proposal. The staff is relying on the Duncan Associates report for their opinion as to the legal authority. Do the Duncan people have a lawyer that is registered to practice law in Nebraska?
5. We have a city utility (LES) that does get its job done. Many years ago, that same utility was owned by the city and it was in the same sad state of affairs that the water and sewer department are today. Incidentally, that was a focal point in the letter that was submitted to the city on May 30<sup>th</sup>. The response addressed nothing concerning that particular question.
6. One of the reasons we have fallen behind on our street needs is that we continue to use street funds for other purposes. Tunnels and paths are desirable; streets are essential. He does not see congested bike paths but he does see congested streets.
7. This plan is not a solution. It identifies the scope of the problem with a vague and partial beginning solution. If a business man was to take this plan to a lender and present the scenario that here is a large liability, a small identified projected revenue, with a footnote on the bottom, “trust me”, Hampton believes

that in all likelihood it would be turned down. Hampton has served as chair of LIBA's tax efficiency committee and he has reached the conclusion that we're not near as short of tax dollars as we are the prudent use of tax dollars.

8. The Lincoln economy is in a stressful condition. We cannot continue to lose jobs and we cannot continue to dwell on desirable thrills rather than adequate police protection, basic needs and adequate infrastructure. The city just decided to spend \$900,000 of tax funds to renovate the existing mall right outside of this building. Something needs to be re-prioritized. We need to address the needs of a total community.

Hampton urged that the place to start is to put this proposal on pending and develop a solution using sound fiscal responsibility that will assist a strong economy rather than a plan that resists investments in Lincoln's future and places a burden on the young, the elderly and everyone in between. If we continue on the path of losing jobs, all of Lincoln has a bleak future. This plan will eliminate jobs. Hampton is concerned about Lincoln's economy. This plan does little to show concern about that economy. It is troublesome. He has 65 employees. He worries about 65 families. That is important to him. If people don't have a job, they don't pay taxes. We can do better if we do it all together.

**27. Rhonda Eschliman, FMA Realty**, testified in opposition as part of the **LIBA** presentation. She noted that growth was something we struggled with during the Comprehensive Plan debate and she believes that impact fees are going to impact growth in a negative way. She travels often to conferences out of town and the words "impact fee" have a negative connotation to the developers, retailers and the brokers with which she has had discussions. Commercial real estate is very intertwined with what happens in our housing retail efforts. There are three indications that the impact fees will hamper the growth goals that are in the Comprehensive Plan. One is that they are signs of leakage into the small communities in and around Lincoln. A member of the plumbers association shared that his industry is very worried because people will build in the small outlying communities. Another reason the impact fees will have a negative impact is that they do not attract new business. We are seeing a slow down in the commercial real estate sector. Impact fees are one more stumbling block to creating new jobs.

Eschliman submitted a demographic report from the Mayor's Technology Council (**Exhibit 16**), showing that Lincoln is straggling behind its competitive cities in terms of employment. The second largest growth of our industry in the last 10 years was construction workers. This year's unemployment average compared to last years is up 25%. It seems like we have our artillery loaded and our guns pointed right at developers and they are the people who probably have the best chance of providing jobs.



Eschliman submitted that this discussion has fragmented our community. It has created resentment between the developers and neighborhoods. We have pitted Downtown and Antelope Valley against the growth in the suburbs when what we ought to be doing is celebrating the fact that everyone is going to be having more construction jobs. We have become our own worst enemy. She is afraid it will take an economic crisis for Lincoln to switch its paradigm. It seems like we fall into our defensive mode. We don't think about building more roads and do things to create jobs. We need to be turning this town from top to bottom, upside down, to try to figure out ways to attract new jobs into our community. We need our city leadership to be strong and to have courage to invest in the future.

***PRESENTATION BY ASSOCIATED BUILDERS AND CONTRACTORS - Opposition***

**28. Dick Johnson**, 830 Westgate Blvd., appeared on behalf of the **Lincoln Council of Associated Builders and Contractors (ABC)** and **Associated General Contractors (AGC)** in opposition. ABC has 100+ member firms in Lincoln involved in the commercial and industrial construction industry. ABC believes that the impact fees as proposed, as a single entity by themselves, will have a negative impact and negative effect on the economic well-being of the City. Since the commercial and industrial contractors and their employees in Lincoln rely on the economic health of the entire city, impact fees, when implemented solely by themselves, could severely hamper the siting of new business and expansion of existing businesses. Johnson then referred to the development of the grocery store in the West "A" neighborhood. If the impact fees had been in place, the additional costs would have been \$75,000 under the current proposal and \$152,000 under the initial proposal. Johnson believes it would be unfair to put additional impact fees on the improvements to be used by the population. The most recent national grocers alliance survey showed that the average retail grocer in the year 2000 had a net profit of less than 1% on sales before taxes. The additional \$75,000 in impact fees would have required additional sales of 7.5 million dollars.

Johnson then referred to two projects that were approved by the Planning Commission in June. One was for commercial and office. With impact fees, the additional cost would have been \$333,000 to \$387,000. The other project was for a 120 multi-family unit complex. With the impact fees, it would have cost the developer or renters an additional \$230,000. The amount of economic variance will have an adverse impact on the amount of work that is available for the commercial and industrial construction employees in Lincoln.

Johnson submits that the problem wasn't created in the last two years. Impact fees would only handle maybe 10% of the city's identified infrastructure needs. We know in the construction industry that if new housing units are not built, commercial and industrial construction will not be building new plants and office buildings for people to work in and we won't need retail for them to shop in.

ABC would concur with many of the alternative proposals that have been offered. This infrastructure funding problem needs to have all areas of the community involved in solving the shortfalls. Impact fees address a small percentage of the needs and will be very detrimental on all sources of revenue that is collected to fund our City.

Johnson believes that if impact fees are the only solution that comes forward at this time, the other areas of funding will be discussed to death and the problem will continue to grow. During the last Mayoral race we heard the comment continuously that, “developers must pay their fair share”. You all know that developers don’t and won’t pay impact fees – the citizens buying and building new houses, business and industry will be paying them. These citizens are already paying sales tax, gasoline tax, wheel tax, property tax and utility fees. Let’s work together to find a solution. ABC believes that impact fees would be an unfair taxation coming forward by itself and would have a long term negative impact on the city. ABC requested that the Planning Commission postpone action and to encourage all parties involved to bring back a solution to address the entire infrastructure funding. Let’s be able to see all the pieces of the puzzle so that we know in fact there is more than one piece in the box.

### **GENERAL PUBLIC COMMENTS**

#### **Support**

**29. Carol Brown**, testified on behalf of the **Landon’s Neighborhood Association** and as secretary/treasurer and member of the **Fair Share Alliance**. Landon’s neighborhood constitutes 300 residents and it is one of the 14 neighborhoods that passed the Fair Share Alliance resolution. Landon’s Neighborhood supports the current proposal for implementation of the impact fees. Speaking as a citizen, Brown commented that she has to shake her head at some of the mis-information that has come forward. She calls it the chicken little syndrome: “the sky is falling, the sky is falling”. These energies would be best used coming together and getting this squared away. She is disappointed about the distorted facts about other cities that have impact fees. These cities are not in decay and destruction. She referred to article in the Wall Street Journal about Ft. Collins, Colorado, after the implementation of impact fees. Ft. Collins is spending its money on schools, parks and other local services. Unemployment recently dipped to 2.5%. Home sales are running at near record pace. Retail sales are up 11.3%. Building permits for single family homes rose 55% compared with 3.1% nationally. This city has steered clear of costly financial incentives to lure new communities. Instead, it spent money on the infrastructure that business needs to grow and the amenities that make the city an attractive place to come, stay and invest. “It is the people who want to live here who drive the economy” (Assistant Management of Economic Development).

Brown believes that if we concentrate on putting together a great impact fee plan in Lincoln, we will benefit, too, by paying attention to well-planned streets, parks and other infrastructure items. Brown believes that impact fees are long overdue. The current method of funding new development robs the existing neighborhoods of their well-deserved maintenance.

In a nonscientific poll on one of our local tv stations, the citizens of Lincoln overwhelmingly voted in favor of development paying its costs for infrastructure. Taking care of development costs with fees will help keep the interior and existing neighborhoods strong. Many in the community do not need or want or can financially afford to have their taxes raised to meet this shortfall in the infrastructure budget. Residential property assessments have gone up 10% in the last year, and the mill levy will be raised for the public schools this year. By the way, commercial property has not been reassessed for 6-8 years. Maybe this should be investigated. Impact fees cannot be the only part of this plan--it is not enough to cover the deficit we have. We have to implement the other sources of revenue that have been brought forward. If you have a 25% drop in unemployment you don't have people to buy homes. Brown believes that the reason we have serious problems with our economy now is because of the situation after 911.

Brown is bothered because some of those that are most focal in opposition to impact fees do not even live in our city.

Brown also pointed out that LES has energy to sell. We can't sell our sewage, we can't sell our water. There is something about that comparison that isn't right. LES has a commodity that they can use.

Brown believes that bonding is a way of taxing the people--that's not fair. Impact fees, bonding and raising our utility rates is fair.

**Opposition**

**30. Darrell Derby**, 5950 Arrowwood Road, is opposed to the concept of implementing impact fees to generate additional money. New development pays for itself. The developers pay for the streets, the water and the sewer services, the sidewalks and all the other things that go along with the development. In addition, every new home that is built results in 2-3 additional vehicles with wheel tax paid year after year. This, combined with fuel tax, results in additional dollars generated for public road improvements.

Derby has lived in Lincoln for the last 37 years. He made his career with the City Public Works Department and retired after a disabling stroke a few years ago. He is familiar with the process regarding street construction funds and worked very closely with that.

In April and May of 2000, the Derby's built a new home in Vintage Heights. The primary difference between that and the home they left at 2430 South 39<sup>th</sup> Street is that the home in Vintage Heights was new. The home on South 39<sup>th</sup> Street was built in 1962. The home on South 39<sup>th</sup> Street generated approximately \$1800 in property taxes annually. The new home he built came with a price tag exceeding \$4500 annually in property taxes, with generally the same square footage and same amenities. In addition, he and his wife as well as the people who purchased their home on So. 39<sup>th</sup> Street pay city sales tax. Derby is trying to point out

that it is a filtering down effect. The city does not receive any less in the way of taxes because he built a new home because someone else is living in the other home and they're paying the taxes.

Derby acknowledged that the staff within the Public Works Department has expressed an estimated shortfall of 90 million dollars for road purposes in the Comprehensive Plan. They have blamed the shortfall on community growth as a ploy to justify impact fees. Derby believes that Public Works is very determined to implement impact fees without looking at the alternatives. He also believes that if the impact fees are implemented, it will create a piggy-bank effect for their purposes. Because of his experience in Public Works in the years that he spent in a management role, he believes it is wrong. He does not believe that should be allowed to happen. The real problem is mismanagement of the street construction fund that has occurred for years and years and still is occurring. He believes that street construction funds have been used improperly and are still be used improperly. Several examples come to mind. One is \$250,000 proposed to be used for sidewalk repairs which has nothing to do with the road system. Approximately four million dollars was invested in the street system around the new baseball stadium. He believes it was improper to use street construction funds to pay those costs. The people from the West A Street neighborhoods have been pleading for some relief from the rail congestion for the last 25 years. That construction on the West A Street rail overpass from 1st to 5th Street begins today. Those projects combined represent roughly 20% of the shortfall that Public Works is talking about for the long range Comprehensive Plan. It is simply a matter of mismanagement. If it were properly managed, we would not see that problem occur.

He believes that using impact fees to play catch-up is an enormous mistake. It will result in stifling growth and virtually eliminating new businesses from being interested in locating here.

### **Support**

**31. Maurice Baker**, 3259 Starr Street, testified in support on his behalf and **Clinton Neighborhood Organization**. Clinton is a neighborhood that is part of the older parts of Lincoln and is probably one of the lowest income neighborhoods in the community. Anything that impacts or increases the cost of living, be it higher water fees, higher taxes or whatever, clearly has significant impact in the Clinton neighborhood. As a result, the Clinton Neighborhood Organization supports the concept of impact fees. The Clinton Neighborhood believes impact fees will help pay a portion of the impacts of new development--not going back and correcting past mistakes. We are trying to get the new development to pay more of the costs associated with the new development.

Personally, Baker believes that if impact fees are not adopted, it will cause us to pay some combination of higher taxes and higher user fees. This clearly affects our lower income people. It will affect their ability to pay rent and it will affect their ability to buy houses. Baker

does not believe any one solution is the answer. Baker has no problem with bonding because we are talking about long term investments. But one of the things he is not sure of is how much of the future income that we may be putting up for the revenue bonds is going to be used and whether this throws us behind further in the future because there is less current income to keep up what we have.

Baker is concerned about the idea that the impact fees should be spent within the square mile that they are generated. If that was the only place that we're having the impact, he would agree. But the idea of impact fees is that they impact beyond what the developers are currently putting in, and we're trying to assess some of that cost through an impact fee. If we use that argument with the impact fees, it is just as illogical to argue that we only spend what is generated within a square mile from property taxes in that square mile.

**Opposition**

**32. Art Robertson**, 140 Benton Court, testified in opposition. He has concern about the lack of procedures, processes or controls in the proposed ordinance for how these impact fees are going to be administered. From the perspective of a builder, if the builder takes out a permit on a starter home, pays his impact fee as proposed and builds the home on a speculative basis, and subsequently sells it to a first time home buyer or a home buyer who qualifies for the categorical exclusion or the exclusion due to their income, who in fact is going to receive the credit or the refund? How are we going to handle the fact that the impact fee was collected and now has been in some way excluded? What if in the process of application for refund the home is sold to another individual? Who gets it? If a property receives a refund or waiver, does that mean that we can only sell this house to a person meeting the income requirements?

From the perspective of a home buyer, how are they going to know how this impact fee is being spent and know whether they are entitled to some sort of refund if they fall within the parameters of the exclusion?

If this proposed ordinance does have folks paying their fair share, how come we are not only assessing the households who have children for the cost of our public schools? He sees the value of public education, but he does see somewhat of a parallel. Public education does benefit the community as a whole just as our infrastructure to a large degree benefits the public as a whole, while there are those that benefit more from specific facilities.

Robertson urged the Commission to consider all of the ramifications from all perspectives.

**Support**

**33. Danny Walker**, 427 E Street, testified in support (***Exhibit 17***). Walker lives in an old house. He is a low income homeowner and he does not want to have to sell his house to support new development. Walker supports the contents of the Duncan Associates report

which recommended impact fees at \$9,000. He is in opposition to anything less. The **South Salt Creek Community Organization** takes the same position, due to the fact that the neighborhood happens to be one of the core neighborhoods which has suffered because of new development. However, it would be wrong to place total blame on the developer or the community. The current situation points to very poor management and monitoring by past and present City of Lincoln administrations, who have catered to the development community over the years by believing they pay their fair share (See Exhibit 17 for examples). Walker finds it amusing that the business community is very alarmed by the neighborhoods becoming organized on this issue when one considers the fact that these same neighborhoods have contributed to new development over the years and also have suffered because of the new development with little or no improvements in the areas within which they reside.

### **Neutral**

**34. Barbara Bauer**, 2321 Devonshire Dr., testified in support as long as it is the developer that will pay the fee and not the homeowner. She agrees with several of the people that spoke about this being a piecemeal solution and we may never get the other pieces. She's seen it before. She agrees that the impact fee ordinance should be placed at a public hearing with the entire fiscal package to fund what we need done in this city. New development never pays for itself and everybody knows it. The growth does not pay for itself. The reality is that the increase in cost to the city in services the city must provide is never off-set. Even if you pay for a lot of the infrastructure with bonds, the city still has the cost of the vehicles for extra police and fire, the gasoline they use, etc. Those are ongoing costs for the city and even though you get property taxes, they never completely pay for it all. If they did we would not be in the position we are in today because the city has been growing. We need high paying industrial jobs in this city. Impact fees are not the answer to that. We do not have the revenue. We don't know where it's coming from. We can't even prioritize because we don't have the money.

Bauer does not believe we can compare Ft. Collins, its impact fees and the people that pay them to Lincoln. Ft. Collins has a climate that is attractive. It also has two Hewlett Packard plants and Budweiser. Bauer moved here 18 years ago because even with two good paying jobs at Hewlett Packard, they could not afford the housing in Ft. Collins. If the new houses go up in price (and she believes they are already too high), we will force the housing market in the interior of the city to go up and no one is going to be able to afford anything because of the property taxes. We need a comprehensive program to pay for everything before we do anything. Until we have the total comprehensive program for the funding, this proposal should be put on hold until there can be a public hearing on an entire package. The city is notorious for piecemealing everything together and that's how we got in trouble.

### **Opposition**

**35. Doug George**, 4021 Fossil Creek Circle, testified in opposition. He is a residential home builder who builds affordable housing. He agreed with Duane Hartman's testimony.

Webster defines the word impact as “significant”. George believes that term is a serious understatement from a small businessman’s perspective. To build affordable housing in the Lincoln market place (first time new construction buyers), a \$4,500 impact fee will have an effect on his business, his suppliers and his subcontractors—80 families. There will be a mass exodus of businesses leaving town which will cause serious erosion to the sales tax revenue base. A \$4,500 impact fee will add approximately \$2,100 to \$2,800 more for loan qualification purposes for the type of buyers for which he builds. This is significant. It’s the difference between a sale and no sale. People in this price range mainly work by the hour. This equates to anywhere from \$1.10 to \$1.80 per hour raise for them to qualify for a loan. If the impact fee spirals up to \$9,000, there will be no such thing as affordable housing. Appraisals are an issue that needs to be considered strongly. We’re just not going to have the ability to tack on \$4,500, even on a sliding scale. The margins are low in this price range. Getting an ever-increasing share of a shrinking market is a recipe for disaster.

George quoted from a speech given by Phil Walker at the General Assembly meeting of the Home Builders Association. Walker is a resident of Ft. Collins, Colorado. Mr. Walker has written two books about northern Colorado and one about Ft. Collins, Colorado, now in their seventh printing. He talked about impact fees and their effect on Ft. Collins. “Social and economic suicide; low income families, single mothers, elderly people on fixed incomes were forced on welfare rolls or forced to leave town because of increased prices in rentals because of impact fees. The price of the single family home had doubled in 20 years. Big employers find the market unattractive.” With 1100 jobs lost in Lincoln in the last 16 months, this is significant, especially with impact fees imposed on commercial properties. “Sales tax base erosion because less money is being spent in the community because more is being spent in outlying areas. People moved to other towns that did not have impact fees. Ft. Collins is on the verge of the most serious economic suicide since the grasshopper plagues of 1876.” The fees in Cary, North Carolina, have had the unintended effect of displacing people to outlying towns because families were priced out of markets.

George contended that Waverly is welcoming builders with open arms to help develop their community, not only residentially but commercially. Those people will commute here, use our goods and services and our roads, and not pay property tax, wheel tax or sales tax because they will support their own community.

In closing, George suggested that in some respects those at this meeting who have cried “fair share” are uneducated. When those same people who sit across from me today, ask me in 12 months if I paid my fair share, the answer is no, I haven’t. I will have paid the ultimate price—the loss of my home town, the displacement of my family to find greener pastures, and the loss of my business here in Lincoln. George strongly urged the Planning Commission to postpone any impact fees, especially in their current form, until we can explore other revenue streams and exhaust every single possibility before imposing these fees on the building community and the citizens of Lincoln.

**Support**

**36. Dan Marvin**, 2523 Woods Blvd., who served on the Infrastructure Financing Strategy committee, testified in support of impact fees to pay for some of the cost of growth. In the fall of 2000, Marvin worked with the city and Duncan Associates on the IFS Committee, which came after work done by an earlier “growth on the fringe” committee. Marvin believes that the IFS committee had broad consensus that the exaction system had broken and could not be repaired. We heard testimony about the time consuming process of negotiations. A developer had invested large sums on a tract of land only to see the city push the project back two years in the CIP, raising the cost of the development by 15-20%. These examples show that the exaction system is inherently unfair, time consuming and unpredictable. If time is money, then the exaction system has many hidden costs that are allocated most heavily on those who develop. It is a system that asks little or nothing of the past investor who waits for the road, school, and water and then sells for a maximum profit.

The IFS committee wanted to achieve a new system that both leveled the playing field and spread the costs. Many have said today that the building community cannot bear these costs. The fact of the matter is roads, sewer, water and park costs have all been negotiated using the exaction system and many developers have answered the call to contribute towards these costs. Marvin submitted that an impact fee levels the playing field. It reduces time-consuming legal negotiation and an impact fee set high enough provides the certainty that infrastructure will be provided in a timely manner.

Marvin stated that when his service was over he felt that a certain amount of consensus was formed regarding the use of impact fees. He was encouraged by developers who wanted to do away with the exaction system. In November, 2000, the IFS committee received a letter from Mark Hunzeker representing the Home Builders Association of Lincoln and the development community (**Exhibit 18**). Marvin quoted excerpts from Mr. Hunzeker’s letter. Concerning arterials streets, “We believe there is a consensus that street construction is behind the curve and ought to be accelerated. New development may properly be asked to assist in construction of arterials at the fringe,.... We also suggest that a formula be developed for an ‘impact fee’ for the purpose of constructing arterial roadways in newly developing areas.” Concerning parks, the letter states: “We suggest that there should be a system of fees or dedications of land in lieu of fees for parks.”

Marvin pointed out that none of the testimony today has been endorsement of the current exaction system. The IFS committee’s goal was to level the playing field and to broaden the revenue base. Impact fees achieve those goals.

**Opposition**

**37. Bob Benes** of Aspen Builders testified in opposition. He is a builder and developer. He builds between 50 and 60 houses a year, most for young families. He also develops small pieces of ground. Thus he knows from experience the exaction process and the fees to be



paid by a developer in order to get their subdivision accelerated and on the books. Benes believes there is a lot of misconception about impact fees. The fact of the matter is that developers are paying in excess of their fair share. They are paying more than what is required of them and they're paying it in order to get their projects through the door. It is a problem. So you enact an impact fee? What does that do? As a developer, he welcomes an impact fee because he will get filthy rich. All those fees that he has been paying to get his subdivision through won't be paid anymore. Builders and new homeowners are going to pay the impact fees and the developer doesn't have to pay it anymore. Where is this "make the developer pay his fair share" that we have heard for the last three years, especially from the Mayor's office in his campaign? It's not happening.

Benes went on to advise the Commission that he just opened 155 lots in Waverly because of the threat of impact fees. He has sold 10 homes in the last two weeks in Waverly because people are scared of impact fees. This is not a good thing for Lincoln.

As a builder, Benes loves building affordable housing for young families. Their American dream is to own their first home. It is wonderful to work with these people. But that will go by the wayside in Lincoln, Nebraska. It will be difficult to build affordable housing. It's a big enough problem now. Developers now pay \$1,500 to \$2,000 per lot to get their developments processed. If you pass an impact fee of \$2,500, the developer doesn't have to pay that anymore. When will we have impact fees? The first impact fee probably won't be charged for the next three years, and it will be \$3,500 by then. When will a developer go out and break ground on a new development that is going to have impact fees? Three or four years.

Benes is opposed because he grew up in Lincoln, he loves Lincoln, he builds in Lincoln, he lives in a great neighborhood, we have great schools, and he is willing to pay his fair share in a heartbeat. He does not want to penalize these new young couples that want to build their first home. If we want to talk fair share, maybe we should all pay a fair share and impose impact fees for every single family in Lincoln and take care of the problem. He believes the impact fees will cause economic disaster.

### **Support**

**38. Jeanette Fangmeyer**, 5401 Wilkins Circle, testified in support as Vice President of the **Arnold Heights Neighborhood Association**. On June 10, 2002, the Arnold Heights Neighborhood Association Board passed a resolution in favor of the concept of impact fees in our community. A copy of that resolution was submitted in June and the Association now asks the Planning Commission to vote in favor.

### **Opposition**

**39. Steve Woltemath**, 2910 So. 27<sup>th</sup>, testified in opposition. He owns his own home and a business with a new building. He employs a number of people that are related to the construction industry and he believes that the impact fees will have a negative impact. Another definition of "impact" is to strike with a blunt force to create trauma. That's what we're

going to do here. Woltemath has lived in Lincoln 51 years. How did we get this far? How were our existing streets funded? How did we get here without impact fees? Was it because our forefathers actually used road construction fees to build roads? Did they actually use these things for the proper reasons? He believes that there has to be a great deal of thought given to this. The Planning Commission holds the future of the city in their hands. To be fair doesn't cause one person to pay for something and another person has it. Perhaps maybe we should. Every property owner in town should pay a one-time impact fee and you've got your problem solved. He disagrees with some of the exemptions. He longs for the good ole days when you could go downtown to a vibrant community. Downtown will never be the same. Why exempt it?

### **Support**

**40. Kandra Hahn**, 1425 So. 22nd Street, testified in support as member of the **Near South Neighborhood Association**. She has occasion to be out in the community quite a bit and to be with groups of people as they wrestle with the concept of impact fees. The unanswered question that hangs over most of the meetings she has attended and the question that people take away with a bewildered look on their face is, why is what we did yesterday not effective today? Why are we changing as a community? Hahn pointed to three factors that are very significant. First of all, we are a bigger city. In and of itself, the proportions change in a bigger city. Some planners say that when you tip over 200,000 population, the whole city changes fundamentally--all the ratios are different. People live differently. There are more opportunities for conflict. There are more opportunities for error and annoyance, and each one of those turns into a municipal cost ultimately. And incidentally, impact fees don't even deal with the cost of indirect services which also multiply rapidly. Secondly, if the whole city gets bigger, the older city gets bigger and the older city gets older. Therefore, the demands for repair and maintenance increase at a different ratio, so proportionately more sidewalks are cracking, more water and sewer systems no longer work to the standard. And finally, we don't live like we used to live. The system demands of new developments are much greater than they used to be. When I was growing up it was not unusual for a family of four to live in a home of one or two bedrooms and we all shared a bathroom and we shared a car. That today is unthinkable. So the complexities of the system multiply. The standard of now may be the huge numbers of single people that live alone in homes where families once dreamed of living. All of these things create municipal costs on a soaring curve as opposed to a straight line. For that reason, Hahn would say that we haven't just gone crazy overnight. Hahn requested that the Commission support this reasonable response to changing conditions.

### **Opposition**

**41. Allen Barber**, 3357 Long View Court, testified in opposition. There has been a lot of controversy back and forth trying to compare Lincoln to Ft. Collins, Colorado. The weather is compared to San Diego. There are over 300+ days a year of sunshine. There are no bugs. The amenities are huge. There are so many more things that it has to offer when compared to Lincoln. He does not know how you compare apples to apples. He was fortunate to work

for a very large developer on the outskirts of Ft. Collins in the foothills for 7 years. The impact fees that were imposed were a difference in night and day. The last two building permits that he pulled there were in excess of \$8,000 per house, not including the tap fees for water and sewer or the park user fees. The misconception about Ft. Collins is that during that time they were very fortunate to have a large expansion going on at the Hewlett Packard plant, the new airport was being built down in Denver, and also Anheuser Busch was building a brand new brewery there. There was a stimulation at the time that kept everybody busy. Lincoln is not in that position.

Barber was partners with a developer and partners with a bank in Ft. Collins. The homes were not selling. He stopped building homes. It was like someone had shut the water off. It was devastating. It got to the point where he could not even feed his family. He was behind in his mortgage payments. Some friends supplied his family with medicine. The neighbors all pitched in together to buy groceries and he borrowed \$500 from his parents to move back to Lincoln. The waiting list at that time for a moving van was approximately 4-5 weeks. Barber was fortunate enough to sell his house. He hopes that he doesn't end up being in the same boat this time. We need to plan our work and work our plan.

### **Support**

**42. Jennifer Brinkman**, 1166 Idylwild Drive, testified in support on behalf of the Board of Directors of the **East Campus Community Organization**. ECCO promotes active involvement by all residents of the area bounded by 33rd, 48th, Holdrege and Vine Streets in a concerted effort to better our community. As president-elect of ECCO, Brinkman is testifying to remind the Commission that the Board of Directors voted on May 9<sup>th</sup> to support the concept of impact fees as a way to fund infrastructure growth in new developments. Established neighborhoods like East Campus feel like we have to compete for funds to maintain our streets, curbs, water and wastewater lines and develop neighborhood parks. We recognize that the only way to narrow the proposed budget gap for the development and maintenance of city infrastructure is to identify additional revenues. We agree that improvements that benefit the whole community should be paid for by the whole community; however, improvements that significantly benefit a new development should be paid for in a significant way by the homeowners in that development. The Duncan study only identified four very specific capital costs, and the whole community will continue to pay for fire stations, libraries, schools and additional law enforcement, as well as many other city services if the impact fee proposal is adopted. Do we want impact fees implemented? Yes, but here is what we don't want. We don't want the adoption of impact fees to mean a blank check for increased water and sewer rates, and we don't want to see the city bond for roads if it means a really large increase in property tax rates. It's the citizens on fixed incomes living in those homes that we need to approach to discuss potential increases in taxes and fees to fund growth on the fringe. It is vitally important that the whole community participate in this discussion about whether the Comprehensive Plan we have just isn't affordable. ECCO strongly believes that Lincoln taxpayers should not accept additional increases in fees or

property taxes without the adoption of the impact fee proposal. However, ECCO acknowledges that impact fees are only part of the solution, and ECCO looks forward to participate in future discussions about how to pay for growth and the maintenance of our current infrastructure in Lincoln.

### **Opposition**

**43. Jim Christo**, 6945 No. 7th Street, testified in opposition. Christo submitted a copy of a Letter to the Editor from a recent citizen that has moved to Lincoln and had lived in Cary, North Carolina (**Exhibit 19**), which gives evidence that maybe impact fees are not such a great thing in his perspective. He is also concerned about what will happen to the surrounding communities such as Waverly and Hickman if Lincoln imposes impact fees. As a business owner, Christo has discovered that there are two ways to learn lessons in life. One is by making your own mistakes, and the other is by learning from someone else's mistakes. He has also found that learning from somebody else's mistakes is a lot cheaper than his own experiences. Christo urged the Commission to do due diligence and research. Maybe there is a bad side to impact fees. He and his wife chose to be childless. They have some property. They pay a lot of taxes, and they have no problem paying taxes for LPS because the future of Lincoln rests with the youth. Christo also submitted that the future of Lincoln rests with the future young home buyers starting a family. This may impact their ability to have the home that they want and to create the memories that we all maybe had the privilege of having. It is the Planning Commission's responsibility to provide the citizens that opportunity.

Christo also submitted **Exhibit 20**, a letter from **Dave Chapin, President and CEO of D.C. Concrete Construction, Inc.**, in opposition.

### **Support**

**44. Mike Carlin**, 2700 W. Paddock, testified in support. He observed that the Realtors were all testifying about needing more developable land during the Comprehensive Plan process. Staff reminded everyone that more land meant more cost. We already had a multi-million dollar deficit in the plan, yet we added more land. He does not recall anyone speaking out against impact fees during the Comprehensive Plan hearings. The land was added, the Realtors got what they wanted and now they want all of us to pay for it. The out-of-town consultants who have no financial interest in this community have said that the true cost of development is \$9,000 per lot and Carlin agrees that phasing that cost in does make sense. Carlin is disappointed with the Mayor's "compromise" with the developers and Realtors. It starts out at \$800 per lot and works its way to \$4,500 per lot in 2007. That is only half-way in 2002 dollars. We didn't get into the situation overnight and we're not going to get out of it overnight. But it is a long time coming at \$800 per lot.

Carlin pointed out that the balance of the Mayor's plan has the rest of us paying the balance of the true cost of development--through bonds, wheel taxes and utility fees, and he thinks that is wrong. It would be humorous if it wasn't so serious that the same lawyers who are rattling

the lawsuit savers are the same lawyers that you see up here in this position every Wednesday afternoon who have been getting rich under the current system.

As representative of the **Friends of Wilderness Park**, Carlin noted that a small part of the impact fees will go to neighborhood parks and trails which should hopefully allow a little more money from the general parks fund to go to the larger parks that we all use. The Friends of Wilderness Park have submitted a letter of endorsement for impact fees.

### **Opposition**

**45. Dr. Janet Waage Lingren**, 2401 So. 75th Street, a counselor in private practice, thus an independent self-employed business woman, testified in opposition. Her basic concern in opposing the impact fees is her concern for a healthy economy and reducing or limiting increase in home taxes. She did some research and quoted from a study from the Graduate School of Public Policy Studies at the University of Chicago. The researchers found that municipal impact fees had substantial influence on the prices of single family homes in eight Chicago suburbs between 1995 and 1997. The researchers found that developers respond to such fees by building less housing, building in areas less suited to commuting patterns and community planning, and by building larger and more expensive homes. The empirical results of this research conclusively show that fees increase the price of new and existing homes. The researchers found that a 29-31% decline in residential growth rates in municipalities with impact fees have increased prices and lead to fewer sales. Another finding was that impact fees may place a disproportionate burden on poor and middle income home buyers because fees represent a higher percentage of the sale cost of a lower priced home than a higher priced home. Therefore, impact fees are more likely to push moderate income home buyers out of the market. To the extent that income was correlated with race, impact fees create barriers to the migration of minorities into the suburbs. In looking at a number of different studies, Lingren found that the impact fees lead to an increase in the valuation of existing homes, therefore leading to an increase in the taxes paid even though the mill levy may not go up. Construction would move to areas outside the city limits, avoiding the high cost of housing within the city; however, those living outside the city limits continue using the facilities and the infrastructure of the city and are paying nothing.

Lingren moved here from Idaho in 1980. A factor related to her move was that there had been a dramatic decrease in the vitality of the economy in Idaho because of legislation that put limits on growth. She does not want to see that happen in Lincoln. She thinks of a healthy economy as equivalent to the lifeblood of the community. The effect of impact fee would be equivalent to shutting down the capability of making new blood cells, and we know what happens when the body can no longer make new blood cells. New construction and new business is evidence of a healthy and vital economy and she is afraid we could lose that if we implement impact fees.

**Support**

**46. Kent Seacrest** testified on behalf of five different clients: Southview, Inc., Ridge Development Company, Eiger Development, Don Linscott, and NEBCO, Inc., who would all like to go on record in support of the administration's August 26<sup>th</sup> proposal for the impact fee and infrastructure financing strategies. Seacrest's clients are in support of the \$2,500 to \$4,500, in support of the category exemptions, in support of a business plan, and in support of a workshop to look at efficient ways to save infrastructure dollars wherever possible. The reason Seacrest is in support is because we are already paying impact fees. It's the negotiated technique and it has not been a very fun or pleasant or positive experience. We are already paying \$1,800 per dwelling unit. We are already seeing that it is not being uniformly negotiated, and that is not appropriate. We are already seeing property owners across the street from us get free lunch after we just paid for their infrastructure, and that's not fair in the market place. We would rather go forward and have five years of a guaranteed schedule and knowing we have category exemptions so that the market can be planned so that we can talk to landowners and try to show them concretely what we are going to be paying. Because up to today, we cannot show those landowners with certainty what we have to pay because we don't know. It varies from case to case.

Another concern is that we have a Comprehensive Plan that we just had community consensus upon that says we are going to grow at 1.5 %, and we just heard recently that when the administration put the price tag on that Comprehensive Plan that shows the new growth areas, we are short 300 million dollars for the next 6 years as a community. That is really huge as to the vitality of our market and where we are going to go as a community. All segments need to step up to the plate to solve this issue.

Seacrest went on to state that the five developer groups that he represents have agreed to step up to the plate and agree to this proposal, based on the understanding that other revenues sources will need to be found and defined in a very prudent way. This business plan needs to look outside the box at new revenue sources, including bonding, general obligation bonds as well as revenue bonds. We are going to have to look at the most equitable techniques and not just look at the regressive techniques because impact fees by definition are regressive. We need to look at the most efficient end-user fees. What if you are elderly and you don't drive? And when you buy a house--that person just paid for some end-user fee and they're not really using the road network. Gas tax is a much more efficient model. But we have to go get enabling legislation to get that job done.

Seacrest submitted that we also need to look at the public costs. Not everything should be paid by the end-user. What does that mean? Let's take public education. We don't ask parents to pay for public education by themselves because there is a public benefit to have a smart society. So what we have to ask ourselves is, what portion needs to be end-user paid and what portion needs to be paid by the public. Infrastructure has the same equation. You would never ask the end-user to pay for all of the infrastructure. We need to pay as a community for some of this jointly, but yet there is some infrastructure more appropriately paid

by end-users. So don't look for impact fees to solve it all because that's not real. We've got to look at the public portion of this. Impact fees are not designed for part of the public costs.

Seacrest does not believe it is in the best interests of the community to wait for the entire business plan. Historically, public policy or government is done incrementally. It would be great if we could do everything comprehensively, but government can't work in all instances on a comprehensive model. It is just too difficult--it creates paralysis if they try to solve every problem at the same time. The proposed Infrastructure Financing Committee has a huge task just to do what we are assigning to them by June. If we give them impact fees, they won't be able to accomplish their task by that time.

Seacrest pointed out that for the last two years, development projects being negotiated are almost getting stopped in the mud because the city says we are short of money. When we get slowed down hard for two years, that is telling us that 2-3 years from now we are going to be real short on lots. If this committee has to take on impact fees, too, and they take an extra year, we are going to be short on lots another year, which we cannot afford as a community. It's not just lots, but also retail, office and industrial sites. Holding costs is becoming a huge crisis for the developers. It is taking longer and longer to cross the finish line on these projects. Don't ask us to hold on and live with the old system any longer than we have to. If we delay the decision an extra year, we will cause the shortfall, and the uncertainty of impact fees is right now stopping the market. If we debate impact fees for another year, it will stop a lot of transaction because nobody knows where they are landing on impact fees. Having some certainty of at least knowing what the fees are is better than not knowing.

Seacrest submitted motions **Exhibits 21 and 22** as proposed amendments. Seacrest's clients agree with the administration on the first tier of issues. Earlier this week, Seacrest gave the administration 15 second tier issues--the details--but they are important details. The administration has orally indicated agreement with most of them. **Exhibit 21** represent those issues that have not been agreed upon. But he has been told this evening that the administration is in agreement except for the handwritten words "with interest" on **Exhibit 21**.

**Exhibit 21** shows seven benefit zones (as opposed to four) and Seacrest believes they are in agreement on those seven benefit zones, which will better meet the Supreme Court tests of proportionality and the nexus test that we have to meet as a community. In addition, he believes there is agreement that we will create another impact fee. There will be two subparts to water: 1) city-wide, and 2) the distribution lines--the lines in the arterial streets. We should have those assessed and funded on the same seven districts because you generally build the road and water at the same time.

The other change has to do with parks. These are neighborhood parks that we are supposed to fund. The Comprehensive Plan says that they should be every mile, so the district should be collected by mile and spent primarily in that one mile, but if there is a unique circumstance

such as a barrier or not all the land use is there, allow them to take it to the abutting one-mile area. We have also talked about reducing 10 years to 8 years for refunding the impact fees. The real reason is to give two years for planning and six years for the CIP process to work itself through.

Another proposed amendment allows using impact fees to pay back developers, but allow us to also negotiate other funds like wheel tax or gas tax and get those funds back if we go into the lending business. This amendment says that we can use other funds to pay developers back. We can collect the impact fees not just from our own development, but from that district we just created. The part the administration is not agreeing upon is "with interest". If we loan money in the future, we would like to be paid interest. It's fair and by us charging interest it will give government more incentive to go borrow their own funds. We need to be paid interest because if we don't, it is not fair and we will have to show on our income tax an imputed loan, and the federal government is going to charge us income tax on that imputed interest that we never got. The administration has not yet shared their support on this one.

***Exhibit 22*** refers to economic development. We need economic development. Some of these projects need to be waived from impact fees for economic development purposes. The proposed amendment would allow the Mayor to be able to call the shots on whether or not we need to reduce the impact fees for a large employer based on the Council standards. The language proposed is based upon the Council's general standards to allow the Mayor to do it because he can do it faster and quicker, and that can be the difference on whether or not you attract a company to the community.

Steward inquired whether Seacrest would accept additional language in ***Exhibit 22*** referencing the Comprehensive Plan in the last sentence. Seacrest would be in agreement but he does not know about the administration. Steward pointed out that there is a process for amendments to the Comprehensive Plan. Seacrest suggested that the Mayor may not have the timeframe to negotiate with that economic employer. Steward's concern is that it diminishes the importance of the Comprehensive Plan not to reference it. Seacrest suggested that between now and when the Commission votes, he is hopeful to incorporate such language without jeopardizing or missing a great opportunity.

### **Opposition**

**47. Randy Meyer**, 2900 Fletcher Avenue, Apt. 230, testified in opposition. He moved to Lincoln in 1998 from Flagstaff, Arizona, where there was a \$2,000 fee for a water meter, \$2,000 for a landscape architectural drawing, \$2,000 every time you turn the corner. He does not believe impact fees will reduce the tax burden because the valuations will rise. In Flagstaff, there was a year and a half wait for housing for those that needed help getting a home. When you have to wait that long for a little bit of supplemental income because everything goes up in value and you can't afford to live in a house or an apartment complex, then it affects the poor. Consequently it affects every businessman in town when he has to go from paying \$10



to \$14 an hour for employees. Meyer lives in an apartment in Lincoln because he cannot afford a home. Impact fees are not going to save anyone any money that owns an existing home. Impact fees will not give any of the poor people an opportunity to get a home. No business is going to come here and pay impact fees. Meyer stated that he is speaking for all the poor people. He spends 30 hours a week as a volunteer counselor to the less fortunate people, and he knows all of these people struggle every day to find a place to live. This will not help. This will affect every one of them. Meyer is shocked to see that any developers are in favor of this. Maybe they're going to save money on this thing because the home buyer will pay it.

***Support***

**48. Mike Morosin**, past president of **Malone Neighborhood Association**, testified in support of impact fees. Morosin discussed the Malone Neighborhood Association and its association with the loose-knit movement called "One Community Alliance". Both of these groups have members who are either active participants in the Democratic Party or Republican Party, or have positions of management responsibility in firms sensitive to public relations here in Lincoln or at the state level. As such it would be asking a lot for them to come out publicly in support of the impact fee structure, as opposed to a compromise impact fee covering 10% of the net financial impact of new development. The ball park, since it was done by the same City Hall administration now proposing to manage negotiation of impact fees, might be a good example of how the cost of impact could be done more responsibly in the future.

"One Community Alliance" individuals have pointed out repeatedly in public meetings for approximately a decade that Lincoln needs a storm drainage runoff neutral and waterway net rise neutral development policy covering the entire Salt Creek watershed. To the credit of the technical troops at City hall, such a policy was researched, formulated and brought forward several years ago. Mayor Wesely was publicly in support of this policy until it was discovered that the University of Nebraska proposed ballpark development would violate the policy in two ways: 1) Restrict the flood stage flow cross-section of Salt Creek, i.e. result in a significant net rise due to the blockage of storm flow at flood stage; and 2) reduce the temporary water retention due to the fill brought in for the parking lot and other structures. This does not mean that the ballfield could not be built as proposed, but rather that it would cost more than originally envisioned once the added cost of compensatory flow channel and water storage excavation were accounted for. These costs actually will be paid. There is no free lunch. It is just that rather than the University and allied public sector interests in the development paying the cost, the businesses and homeowners within about ½ mile of the ballpark will pay higher flood insurance and incur a reduction in property value in perpetuity.

Morosin and others have for several decades described the "fair share" principle in public meetings as follows: Neighborhoods should get their per capita fair share of capital improvement and maintenance dollars, support for local schools and police and fire protection

and so on. So, for example, a neighborhood without a campaign contributions wherewithal of suburban development dollars should not be asked to give up schools, live with potholes in the streets, while being taxed only to watch this money dumped into the development 10 miles or more from the roots of city services. To get out of the realm of expedient compromise and into the realm of fact, the total tax levy in Denver is less than half of one percent. And for an example, among other taxes, gasoline taxes are less there, too. Neighborhoods should be structured to support their "fair share", and no more than their fair share, of financial and social assistance burden of maintaining the city. For example, established neighborhoods should not be made to accept all group homes, public housing and street people that the contributions-driven political process can sweep out of an adjoining area into the City. Morosin himself will be impacted by Antelope Valley. There is no comparable house that they are going to be able to find so he is going to have them jack his house up and move it. Impact fees are very important. Everybody must pay their fair share. Morosin has lived in the Malone Neighborhood since 1969, and these residents were not getting their fair share up until a few years ago when they started asking, where is our fair share? We have gotten some sidewalk work done, we've gotten some rock in some alleys, but more work needs to be done. Morosin believes the fair share principle is a good concept to adopt.

### **Opposition**

**49. Mark Hunzeker** appeared on behalf of the **Home Builders Association of Lincoln**. He advised the Commission that he has not had an opportunity to review the amendments that were submitted by Mr. Seacrest, so he will address what he thinks he heard. We have heard that impact fees can have a devastating effect on low and moderate income households, both home buyers and renters. We have heard that they can have adverse impacts on economic development efforts and jobs. We have heard that impact fees are only a piece of the puzzle. That's an interesting analogy. What you haven't seen yet though is the box top that has the picture, nor have you seen the other pieces of the puzzle. They're not here. You have not heard a ground swell of support for impact fees. By comparison, the opposition here today and tonight has been overwhelming. You have not heard a serious proposal to solve the other 90% of the infrastructure finance problem. You have heard a proposal to create a committee to consider a lot of alternatives (good alternatives, and not even a bad idea to have a committee), but no concrete proposal to solve the other 90% of the problem. You have not heard how the various exemptions that are in this ordinance will be funded. Will it be, once again, a raid on the street construction fund? You have not heard an unequivocal opinion from a lawyer licensed to practice in Nebraska that this ordinance is authorized pursuant to the powers granted by statutes to cities of the primary class or in conformance with the Nebraska Constitution. In Hunzeker's opinion, this ordinance will not withstand judicial scrutiny. The city has lost a case that is better than this one. He does not believe that this ordinance will pass a judicial challenge.

Hunzeker suggested that the Commission should consider Russ Bayer's wise counsel to put this matter on pending for a period of months; to have those other pieces of the puzzle put before the Commission; to have the picture drawn to tell you how this is going to fit in the big

scheme of things. No one denies that as a community we have a problem with infrastructure finance. It needs to be addressed. You have heard alternatives offered today that have a great deal of promise that will not necessarily have the same kind of adverse impacts that you've heard these fees will have. You owe it to the community and to yourselves to give the process a little time. We haven't even known the magnitude of the problem for more than about 60-90 days. The numbers and the list of projects that constituted this so-called "infrastructure finance gap" have not even been available for more than about 60 days. We've had a lot of positive discussions over that period of time, but it is time to sit down and get serious about all of the alternatives and to come up with a solution that addresses all the needs and how we are going to fix the problem prospectively without picking out one small segment of the community and creating this kind of divisive atmosphere of new versus old.

Hunzeker reiterated that he has not seen the amendments. For the most part, what he heard was positive with one really big exception. He is just stunned with the idea of politicizing the exemption process by putting sole control outside the public process in the Mayor's office. He does not understand it. He doesn't know where it came from. It's a really bad idea. Hunzeker would suggest that it, along with the other amendments, deserve a lot more review, along with answers to the rest of the questions that have been asked this evening.

In conclusion, Hunzeker requested that the Commission put this on pending and wait until the committee does its work and brings forward a package so that you have an idea how this is going to be handled across the board.

### **Support**

**50. Ed Patterson**, 2108 Q Street, current president of **Malone Neighborhood Association**, testified in support (**Exhibit 23**). In light of what the politicians have done with the cigarette tax money or the FICA payroll deductions for Social Security trust fund, before the Malone Neighborhood Association would likely approve the ordinance, there would need to be language in any proposed impact fee ordinance specifically earmarking impact fees for infrastructure. The Malone Neighborhood Association is definitely in favor of the concept. In fact, we have been promoting an impact fee concept for at least a decade.

Around 1990, Patterson was exposed personally to the fact that not only can insider interests in Lincoln politics redirect tax dollars for personal use, but they can also reach out and take large tracts of land for personal or corporate use, essentially without paying for it. A fallout of that personal experience was that he was forced to initiate a survey of essentially the entire contiguous 48 states for replacement sites for what had been taken from him. In the early 1990's he found that, for example, Golden, Colorado, had a \$6,000 per unit tap fee for hooking new residential units onto city services. And that was for apartments. And Boulder had both substantial tap fees and a 60-unit per year cap on total new apartment construction in the city limits. Both Boulder and Golden have since moved to a near total ban on new apartment units and the tap fees for new residential units are now well over \$10,000. They

pump water from points many miles away in mountain reservoirs and these, too, now have reached their limits. Hence a reality as opposed to politically based limit on the form that “growth” can take in these cities. By contrast in Lincoln, Patterson found at the time that fringe developers turning options on corn fields into gold through their connections to the City Council were paying essentially no impact fees. Having been a fair share advocate for some time, Patterson began to ask people why this was the case. He was told, among other things, that we get our water from an essentially infinite source--the Platte River, and that was underpinned by an even more inexhaustible source--the Ogallala aquifer. Patterson has been telling these people for some time now that in North, Texas, for example, cotton farmers have mined the Ogallala aquifer down to the point where the energy required to bring water to the surface now costs more than the incremental revenue that can be made from irrigating the crop. How can the Platte be considered an essentially infinite source when Lincoln pumps an amount comparable to 100% of the stream flow past the Ashland well fields daily during the summer.

Patterson went on to suggest that as we are considering the “no fees” addition of several thousand new lawns a year, irrigating with drinking water, let’s consider several other factors not subject to expedient compromise. The City of Omaha apparently does not think that being on the Missouri River makes it the beneficiary of infinite drinking water supplies, either. In fact, they are proposing to build a new large well field facility on the Platte, competing with Lincoln’s Ashland well field for EPA and endangered species limited total water budget on the Platte. Why would Omaha want to do that when they are right next to what some propose as a fallback option for water supplies in the distant future of Lincoln? Could it be that waste discharge into the Missouri impacts the cost of its use as drinking water? Could it be that one significant radiation spill at a nuclear power facility upstream could leave the City of Omaha not only temporarily with no source of water, but possibly with a permanently unusable city water system if it became significantly contaminated with radioactive material from the spill? How about upstream from us? Do we expect Fremont, Columbus, Grand Island, North Platte, Ogallala, Scottsbluff, Sterling, Brush, Ft. Morgan or Denver and the exploding front range along the Rocky Mountains to stand still in their consumption of water that annually recharges the aquifer around the Ashland well fields? Due to the forest fires, water retention by the forest cover will be gone for most of the next decade. With nothing to detain the runoff to Lincoln we will have lots of flow when we don’t need it and it will be all gone down to the Missouri and the Gulf of Mexico when we do need it.

The bottom line--charging fringe developers 10 miles out the true incremental system cost for water, sewer, electric power, roads, police, fire, ambulance, schools, etc., is actually being extremely generous when the reality is that drinking water put on their golf courses and lawns may leave century old homes in the core of Lincoln taking showers on alternate days.

One of the things that “One Community Alliance” has been advocating for a number of years is indexing the property tax to inflation. That is a very simple way to get around this earth-shaking problem that was attached to the concept of impact fees.

Patterson also believes that there should be a rational basis to the allocation of these impact fees to different uses in the city. If we don’t achieve some kind of workable rational basis, we might not pass the legal test and over time, we’ll end up having our money gone and spent on political boondoggles and we won’t have the infrastructure to show for it.

**Support**

**51. Steve Kiene**, 7201 No. 7<sup>th</sup>, testified in support, and disclosed that he is a member of LES Board. He cannot figure out how to compare this proposal to what the LES does. LES builds infrastructure that generates revenue--plain and simple. Building roads does not generate revenue. He does not see the comparison. He is on the Board and he understands how LES works.

Kiene also observed that growth costs money. We all know that. How do we pay for it? The traditional way that we have been paying for it is by raising property taxes and things like that. The more we grow, the more it is going to cost. We’ve grown too fast. Why? Developers have pushed and pushed and pushed for more growth. The economy has boomed. We’ve outgrown our ability to pay for it. Now the developers are coming in crying. It is a tough time for them. Some of them are going to go out of business. That’s life. A lot of jobs got cut recently--are we crying for them? We have to move on. What happened when the cost of drywall and lumber sky-rocketed? The developers are all still here. If raising people’s mortgages \$14 a month to cover these impact fees is going to drive them out business, then maybe they’re not tough enough to be here in the first place. There are plenty of developers that will step in when those developers are gone and they will make plenty of money. It always happens. They have adapted.

Kiene acknowledged that there is no perfect solution on how to pay for these improvements. He does not believe impact fees are a radical new idea. We’re supplementing what we can’t pay for right now. Kiene is a business owner. You don’t make money up in volume by losing money on each sale. You find additional ways to cut costs or increase your revenues. Bottom line, every time we build a house we’re losing more money. We need to do something to cover the deficits. If we wait until we have the perfect solution, in the meantime this train that we’re riding down the track is going to crash. The impact fees are a good first step to start covering some of these costs. We need to make sure we watch where that money goes. The ultimate goal should be to lower property taxes.

Kiene is also curious how these developers are such smart economists that they can understand exactly what is going to happen when these impact fees come in. There is no clear answer, yet they seem to know.

There was no further public testimony.

**Opposition**

The clerk submitted two letters for the record in opposition from **John L. Hoppe, Chairman of Hoppe, Inc.**, and from **Ward F. Hoppe of Hoppe & Harner**, attorneys (***Exhibits 24 and 25***).

**Response by the staff**

Allan Abbott came forward and indicated that he has been asked by the administration to close the staff comments and take questions. Abbott thanked everyone who took time to come and testify today. What we heard today is that there are a lot of concerns about how impact fees will affect people, both personally and professionally. There have been several alternatives to impact fees proposed. Many of the alternatives were already mentioned in the new Comprehensive Plan, including impact fees. There has been fear expressed that if impact fees are advanced, other methods for raising additional revenue will be ignored. This is not even a remote possibility with this administration. Mayor Wesely has pledged that these other methods will be explored by his Infrastructure Financing Committee. There has been worry that the world will change tomorrow. This is not the case. The fact that impact fees will not take effect until next June gives the Infrastructure Financing Committee time to study these recommendations, study these options and come up with a proposal before impact fees are implemented in June 2003.

There have been many questions asked about the details of the ordinance and how the ordinance will be implemented. Without being impertinent, that is the concern of the City Council. The issue before the Planning Commission is simply whether or not the ordinance proposing impact fees is in conformance with the Comprehensive Plan. These decisions on how the fees are administered will be answered by the City Council. Every question that was asked here tonight will be answered and provided to the City Council before the Council holds its hearing on impact fees.

Abbott noted that there have been some amendments proposed. He affirmed that the staff has talked to Mr. Seacrest and all of his amendments, with the exception of "with interest", are acceptable to the administration. Whether or not those amendments are acted upon by the Commission or sent forward to the Council is the Planning Commission's decision.

As to whether or not impact fees are in conformance with the Comprehensive Plan, Abbott did not hear one person that testified here tonight, even those opposed to impact fees, say that the impact fees are not in conformance with the Plan. The critical question of how the city will finance its infrastructure that must be built to support a sensible plan of growth may be the most fundamental and important matter we address as a community in a long, long time.

Delaying action on this ordinance will do nothing but hold the growth of our community in limbo. Abbott strongly urged the Commission to vote tonight, affirming that the use of impact fees is in conformance with the Comprehensive Plan and forward it to the City Council.

Steward asked the City Law Department to respond to the comments about judicial scrutiny. Rick Peo, Chief Assistant City Attorney, stated that he is licensed to practice law in the State of Nebraska. The issue is not black and white. There is no state statute that gives us specific authority to impose impact fees on a general basis; however, there are four fees being proposed (water, sewer, parks, arterial streets). There is different statutory authority that addresses each of those type of improvements in the State of Nebraska that are relevant. Peo believes there is clear authority on water and sewer that we can impose connection fees or impact fees. With parks and streets, Peo believes we have to go to a more implied power under our general authority for public health, safety and welfare. We also have pretty broad statutory authority to legislate in those areas. Peo stated that the staff would not have this ordinance in front of the Commission if there were not a fair probability that it can be successfully defended. But, we cannot make any guarantee. We have had outside consultants look at the issue as well and our own internal staff. Duncan Associates' counsel did believe that there was implied authority in Nebraska to do impact fees. The City Attorney looked at the same laws and analysis and came to the same conclusion.

Peo further noted that there have been articles in the paper and comments tonight about some of the case law and history (Briarhurst). Peo believes that Briarhurst is distinguishable from what we are doing here because it was under the land subdivision ordinance regulations versus the zoning code regulations. In that case the city was trying to require the developer to pay equivalent cost for widening of a local street paving to a widening of an arterial street. The court said that the basis for local streets was that you have access to it. With the arterial street, we require the developer to relinquish access. So, in that case the court said, how can you make him pay for a local equivalent street paving when he can't have access to it? It is not functioning as a local street for his development. Another case said that under the land subdivision ordinance you could order in improvements either by having the developer install them or by special assessment. The court basically said that the two alternatives have to be the same--that the developer can't pay more than the equivalent cost of a special assessment or a special benefit. They found in that case that there was no special benefit to a developer who had no access to a street. We're not trying to impose that type of situation here. The concept of impact fees is not a special assessment. It's not a property tax. It derives its benefit under a different analysis. It is a regulatory fee that affects and regulates growth to insure that it happens properly. Peo believes the case law supports this concept. There is a different perspective out in society now as to what impact fees are and how they are defensible. There are two hurdles: 1) the implied authority, and 2) that they are designed such that you can show a benefit to the developer so that it is not a public tax but rather is a regulatory fee. It has to be designed properly and handled properly to satisfy those concerns.

Bills-Strand was under the impression that the Commission was not going to vote tonight so she has several questions. Is the staff is satisfied with the seven benefit zones? Is Downtown just exempt from arterial streets but pays all the rest? Peo believes that Seacrest brought forward the more critical type amendments. The staff had some negotiations with Kent Seacrest and DaNay Kalkowski about the ordinance itself and then found some additional areas that probably need more clarity, i.e. reimbursements, potential credits, etc. There is some fine tuning that needs to be done for clarity, but they are not substantive changes other than the change in the benefit districts. He believes the seven districts make the case stronger and it shows a closer tie or connection between the improvements that might be constructed by impact fees and the actual development that is occurring.

Steve Henrichsen confirmed that the Downtown exclusionary is as shown on the map submitted by Seacrest with seven districts. In essence, the Downtown area would be the eighth district. There would not be a fee collected or funds spent for arterial streets in the Downtown/Antelope Valley redevelopment area. Sewer would still be a city-wide fee, particularly because the sewer system is so differently established in terms of two treatment plants. It is a very different set up for water. Again, since our treatment plant is outside of the community entirely, Seacrest is proposing that for reservoirs or pump stations for treatment, those would still be fees collected city-wide and spent city-wide, but for water distribution lines (the smaller mains) the impact fees would be collected in the seven districts and then spent in the seven districts. Henrichsen believes the seven districts address a lot of the comments heard from the Realtors Association and others that they wanted to have a closer tie between where the funds were being collected and where they are being spent. These seven districts certainly address some of the concerns of there being 8 to 10 miles from one area to the other. The distance would be significantly less with the seven districts.

Bills-Strand sought clarification about the areas that do not fall under an annexation agreement. For example, I have a successful business and I want to grow my business. I go to a parcel and build a building that is not exempt. However, the developer did pay a fair share of exterior infrastructure. You're going to credit the developer, but the person coming in to start or build the business is going to pay the full impact fee. Henrichsen explained that the reimbursement would go back to the developer who made whatever off-site contributions there were. In the first proposal, the credit may have run with the land; however, one of the concerns that was raised was that there would be a wide variety of fees because each lot may have a very different credit than another lot. Under today's proposal, if a developer makes an off-site improvement, then he is reimbursed for the cost of that improvement and then each of the lots are paying the same impact fee.

Bills-Strand then suggested that if she were going to build a small grocery store at 8<sup>th</sup> and G and try to serve that neighborhood, she's going to pay \$1.50 per sq. ft., where if somebody built the same exact facility in one of the annexation areas, they are not going to pay anything. Henrichsen concurred. In the annexation agreements, the developers have addressed a wide



range of costs--roads, water, wastewater, parks, trails. We were looking at a variety of issues in the annexation agreements and we looked at them comprehensively. The development gets an exemption if the developer contributed within one of those categories. There will still be reimbursement for the developer who made the original improvements. Bills-Strand is fearful that this might discourage people from going back into the older neighborhoods and doing some redevelopment. Henrichsen suggested that in most of the redevelopment areas there would be some existing development already in place which you would be removing. Thus you will get a credit for anything that is removed. Certainly our chief redevelopment area in terms of Downtown and Antelope Valley will not have an arterial street impact fee in that area and for commercial development, the arterial street impact fee is the largest portion of it.

Still referring to the annexation agreement areas, Bills-Strand sought clarification that there is possibly a partial exemption, not always a full exemption. Henrichsen agreed. Of the four categories, there will some that will still have to pay in at least one area. There are at least a few that will have to pay in three areas. There are many annexation agreements that addressed all four areas.

Steward believes there seems to be quite a bit of confusion about the exemption for low income housing. It is his understanding that this exemption is intended to occur not so much for the individual market-based future homeowner, but a program-based condition like NIFA, Home funds, etc. Henrichsen concurred. The staff spent a considerable amount of time talking with people from Habitat for Humanity, Neighborhoods, Inc., Nebraska Housing Resources, and Lincoln Housing Authority about the best way to set this up. Should it be based on the value of the home? Should it be based on participation in a certain program? Should it be based on the person's income? The proposal before the Commission is to base it on the person's income. There is language in the ordinance to the effect that if you were going to claim an exemption for low income, that your paying of the fee is postponed until occupancy permit. At that point you then have your buyer in hand and will know whether they qualify for the low income exemption.

Bills-Strand pointed out that buyers have not been using NIFA lately because they have not been as competitive as regular FHA loans. If I have a young teacher applying for a loan not using NIFA, and if she/he doesn't choose to use Neighborhoods, Inc. for additional downpayment, they would not be exempt unless they did go through a program that would subsidize the downpayment? Peo clarified that it is just income restricted so it can be proven through any mechanism to verify income.

Bills-Strand wants to know who gets the refund. Does the new buyer get it or does the builder get it? Who really paid for the impact fee and who gets it? Peo clarified that if the home builder comes in and doesn't know who he is selling to and he pays the fee, and it ends up

being a low income person, he could apply for a refund because that person was eligible for the exemption. If they paid for it within the purchase price, then the refund would go to the fee payer, which is the home buyer.

With regard to deferring action or placing this on pending, Peo pointed out that there is no procedure in the zoning code and no authority for the Commission to do that. The Planning Commission's actual responsibility under the City Charter and state law is that on a change of zone the Commission is to review it and make a report and recommendation to the City Council which includes findings as to conformance with the Comprehensive Plan and its impact on adjacent properties that might be affected by the change of zone. If the Commission has concerns about needing more information, etc., that is really something for the City Council to consider. It could be the Planning Commission's recommendation that the ordinance should not be adopted until the additional information is provided. The Planning Commission should not be a holding body. Since this is the administration's application and they have indicated that they want it to go forward, it would not be appropriate to put the proposal on pending for any length of time.

Steward recalled that early in the testimony we had an out-of-town visitor who rather severely brought into question the work of Duncan Associates. Steward requested that Jim Duncan be given an opportunity to respond.

Jim Duncan came forward and expressed that this has been one of the most thoughtful public hearings on impact fees that he has witnessed. He was disappointed in the early remarks by the representative of the National Association of Home Builders. Generally, he didn't hear any comments throughout the whole evening attacking the credibility of the Duncan study. There was a comment, however, saying that the study was based on national data as opposed to local. Duncan strongly rebuts that. This gentleman apparently read another study and not that of Duncan Associates. This study is probably more localized than any study he has seen. We used local data for costs; local data for standards; local data for resource documents (Comprehensive Plan, Water and Wastewater Plan, etc.). What is based on national data are three items: 1) the U.S. Census data; 2) American Water Works Association meter capacities--that is standard operating procedure; and 3) we used the International Transportation Engineering Handbook--that is the Bible of impact fees. This has been a wonderful two-year experience. Lincoln has one of the best staffs Duncan has ever worked with. Duncan is very comfortable with the data in the study. It is local data. The little bit of national data in the study is standard operating procedure.

Duncan then recalled the gentleman who said that 40% of the citizens will move out of town if impact fees are adopted. There is no study that has ever justified that. In every community Duncan Associates has ever worked, over the subsequent year or two the growth rate has accelerated. He would like to give impact fees the credit. But what he does give impact fees credit for is opening the doors for more developable land, and Lincoln needs developable land

for development. Impact fees are not a panacea but a very important integral part of the package and it's a first step.

Public hearing was closed.

**CHANGE OF ZONE NO. 3366**

**TEXT AMENDMENT TO TITLE 27.**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

September 18, 2002

Before any motions were made, Larson wanted to discuss the options available to the Planning Commission. Schwinn acknowledged that there has been a great deal of information given to the Commission. The minutes will be available next week. We did announce that we will still be taking comments until September 27th. The Commission does have the option to place it on pending for two to four weeks. The Clerk pointed out that the September 27th deadline was not an advertised announcement. All additional information received after tonight will become a part of the official record and will be forwarded to the City Council.

Steward made a motion to take action at this meeting, seconded by Newman.

Steward commented that this proposal has been before the Commission for three months; there has been very considerate, very thoughtful input; there has been additional work by the staff; he believes there is enough evidence to come to the simple recommendation that is being asked of this Commission. It is not a rewrite, it is not to approve all the technical conditions, it's simply a finding as to whether the policy is in conformance with the Comprehensive Plan. Steward does not believe it is such a complicated question.

Newman concurred.

Schwinn believes we are beyond just in conformance with the Comprehensive Plan because we are asking for a text amendment. He disagrees that it is a finding of conformance. It is asking that we give approval to text amendments to the zoning ordinance and the land subdivision ordinance. Schwinn is hesitant to vote tonight because there has been a great deal of information given to the Commission. We haven't even been able to look at some of the information. He believes it would be a disservice to the people that brought the information forward and a disservice to everyone who testified if the Commission took action without reviewing the information and reviewing the testimony.

Schwinn also suggested that a deferral of action would need to be four weeks (October 16th) because one of the Commissioners is out of town on October 2nd.

Newman agreed with Steward's comments. It is not the job of the Planning Commission to tweak all of the details. She also agrees that it is also a little more than just a finding of conformance. She is looking at this like a term paper that is due and someone needs to set that deadline. By voting on it we can at least say we are serious about this one way or the other. And if they want to tweak the details between now and City Council, that is fine.

Carlson stated that he is inclined to support the motion. We have had ample time. It is important to have the public hearing because that is judged within the context of the information that we have read and how we understand it. He will be disinclined to do any major amendments to the proposal if the Commission takes action. He does not see tinkering with it at this point. He would like to make it an opinion on what's in front of the Commission and he will support the motion.

Bills-Strand understood during the dinner break that there were going to be amendments coming forward and she thought the Commission was going to have time to get comfortable with the language. She is not opposed to a fee structure of some kind but she thinks there will be more support if we look at the amendments first.

Duvall sees this as a really complicated issue with far-reaching effects. We are just starting to develop the concept. We're just starting to put together the pieces of the puzzle. We really need to flesh this out and develop hard numbers to have a clear view on where we are going.

Motion to take action at this meeting failed 4-5: Steward, Krieser, Carlson and Newman voting 'yes'; Duvall, Bills-Strand, Larson, Taylor and Schwinn voting 'no'.

Duvall moved to defer action for four weeks until October 16, 2002, seconded by Larson and carried 9-0: Steward, Duvall, Krieser, Bills-Strand, Larson, Taylor, Carlson, Newman and Schwinn voting 'yes'.

There being no further business, the meeting was adjourned at 10:00 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on October 2, 2002.

## Mayor's Infrastructure Financing Committee

As part of the City's continuing effort to address long term infrastructure needs, Lincoln Mayor Don Wesely will soon appoint a committee to complete the comprehensive solution for closing the funding gap for urban infrastructure maintenance and improvements. This comprehensive infrastructure financing solution will build upon the assumption that the present impact fee proposal will be generally adopted by the City in the immediate future.

The Mayor's Infrastructure Financing Committee will include representatives from business, the development community, Realtors, neighborhoods, the Lincoln City Council, and city staff. The Committee will be supported by a resource group of local experts on public sector financing and bonding, development law, utility rate payers, engineering, low income housing, schools, utilities, downtown, Lancaster County, and State legislation. The Committee will have two subcommittees to look at local financing options and desired State financing legislation.

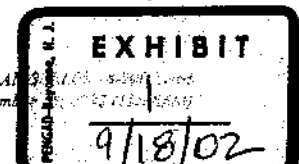
The Mayor will set a deadline for the Committee to complete their work by June 1, 2003, so the results can be used to prepare next year's City capital and operating budgets. The Committee will be given a more immediate deadline of December 1, 2002, for the State legislation portion of their assignment. This earlier deadline will allow the community to work with the Nebraska Unicameral during its 2003 session on desirable changes in the gas tax and other laws affecting the local financing of infrastructure improvements.

The Mayor's charge to the Infrastructure Financing Committee will include:

- ☐ Review viable financing tools to provide adequate and predictable funding for the timely provision of streets and highways, water, wastewater, stormwater, and parks, including:
  - \* Water and wastewater utility rates
  - \* State gas tax
  - \* Wheel tax
  - \* Revenue bonds
  - \* General obligation (GO) bonds
  - \* Financial incentives

(Note: The impact fee approach currently before the Planning Commission is assumed to be included as an integral part of the Committee's comprehensive financing solution.)

- ☐ Examine the timing, prioritization, staging, and phasing options for infrastructure improvements.
- ☐ Consider the results from a one-day public-private sector workshop to brainstorm ideas for ensuring the efficient delivery of public infrastructure.
- ☐ Formulate a financing and capital improvements staging strategy for 6 year, 12 year, and 25 year (Comprehensive Plan) time periods in order to close the project revenue gap. The comprehensive strategy will reflect the growth assumptions of the adopted Comprehensive Plan.
- ☐ Identify State legislative agenda items for the City to pursue during the upcoming 2003 Unicameral session.
- ☐ Review the impact of the selected financing options on housing affordability for all areas of the city, community economic growth and development, and the long term viability of existing Lincoln neighborhoods.



# **IMPACT FEE ANALYSIS HANDBOOK**

Home Builders Association of Lincoln

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1. **ANALYSIS OF DUNCAN REPORT**  
Keyvan Izadi, Land Use Planner  
National Association of Home Builders with assistance from  
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2. **ANALYSIS OF CITY BUDGET AND FINANCES**  
Ronald L. Ecklund, CPA  
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3. **REAL ESTATE VALUE IMPLICATIONS**  
John Layman  
Layman & Associates
4. **ANALYSIS OF LEGAL ISSUES**  
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5. **POSITION STATEMENT AND LETTERS**  
Business Community
6. **CASE STUDIES**
  - *Effects of Impact Fees on the Suburban Chicago Housing Market*  
Brett M. Baden and Don L. Coursey  
Irving B. Harris Graduate School of Public Policy Studies  
The University of Chicago
  - *Growth and Infrastructure in Alachua County (Florida): Does Conventional Development Pay Its Share of Public Costs*  
James F. Dewey, Ph.D., Research Economist  
Policy Studies Program, Bureau of Economic and Business Research, University of Florida  
David A. Denslow, Ph.D.  
Professor of Economics and Program Director  
Policy Studies Program, Bureau of Economic and Business Research, University of Florida

September 18, 2002

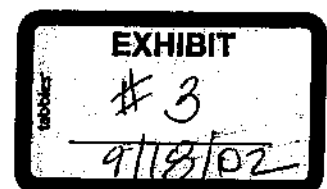
EXHIBIT

2

9/18/02

078

1. There are several exemptions from impact fees provided. From which funds will the impact fee funds be reimbursed for the exemptions?
2. How will it be determined that buyers qualify for the under-80%-of-median income exemptions?
3. Will those qualify for low income exemptions be required to live in the house for a set period of time?
4. Will homes which were exempt when new have to be resold to buyers who qualify?
5. Who will track all this information about buyers' incomes?
6. If a builder takes out a permit for a spec house and sells it to a buyer who qualifies for an exemption, will the builder get a refund of the fees?
7. Why is a 3/4" water service used as the standard for residential impact fees when many single family homes now use 1" service?
8. Once a person pays the fees, how can he track the money to see if it's been spent, and whether a refund will be due?



9. If the City is short of funds for street construction, why does the current Capital Improvements program include \$857,000 of street construction funds for "baseball"?
10. Why are there no standards for granting exemptions in the discretion of the City Council? Doesn't this invite abuse?
11. Since the Mayor agrees that this problem won't solve the problem, and he has a committee that will magically solve the other 90 percent of the problem right now after the May election, why don't we wait to see what the rest of the solution looks like before imposing impact fees?
12. What assurance do we have that the fees proposed today won't be increased even more than the five-year phase-in shows?
13. What assurance do we have that we will not be looking at new fees for other capital expenditures . . . like fire stations, schools, etc.?
14. If capital costs should be borne by those who benefit from the improvements, doesn't that logically imply that major repairs and reconstruction of infrastructure that is past its useful life (i.e., worn out) should be done by special assessments, too?
15. If this represents a "fair share" approach, why don't we impose fees on household with children to support schools?
16. If impact fees are fair, how about a fee in lieu of wheel taxes to support the bus system?





**LINCOLN**  
**CHAMBER OF COMMERCE**

**Separate Motion Related to Infrastructure Financing Strategies  
and Impact Fee Proposal**

Lincoln Chamber of Commerce  
Board of Directors Meeting, September 12, 2002

"Subject to the Infrastructure Financing Resolution adopted by the Chamber Board on September 12, 2002, the Chamber of Commerce supports the City's proposed Infrastructure Financing Strategies, and the impact fees included therein, dated August 26<sup>th</sup>, 2002."

Passed Unanimously September 12, 2002.

081





## INFRASTRUCTURE FINANCING RESOLUTION

**INTRODUCTION:** Community infrastructure such as arterial roadway systems, water systems, wastewater systems, storm sewers, and parks & trails are essential components for economic growth and livability. Adequate and timely provision of new infrastructure and replacement & maintenance of existing infrastructure have been challenges for Lincoln as we have grown.

WHEREAS The Lincoln Chamber of Commerce Board of Directors identified the urgent need to explore various infrastructure financing options in early 1999, noting then that *"managed growth in Lincoln should balance the need for new infrastructure while maintaining Lincoln's high quality of life; ... that funding priorities be established regarding infrastructure issues and short and long term solutions be introduced, debated, and implemented. ... The Board of Directors also suggests that the community needs to identify creative financing options to aggressively fund infrastructure improvements."*; and

WHEREAS the Lincoln Chamber of Commerce acknowledges and recognizes the mayor and other elected and community leaders for their efforts to develop infrastructure financing solutions that will facilitate the timely provision of needed infrastructure; and

WHEREAS the Chamber represents and promotes a broad spectrum of business interests and concerns that extend from new growth and business developments to the established businesses that utilize and fund ongoing system-wide infrastructure costs; and

WHEREAS the Chamber will continue to strive for constructive engagement with a view toward developing a balanced and comprehensive approach to changing the city's infrastructure financing strategy in order to close the significant revenue gap for transportation, water, and wastewater systems that has been identified by the city; and

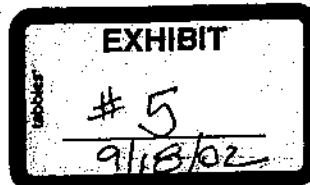
WHEREAS developers, through existing developer exaction policies that include protracted negotiations which both sides often criticize as being unpredictable and costly, already are contributing substantially to some of these "off-site" capital improvement costs, particularly for arterial streets, water, and wastewater facilities; and

WHEREAS the Chamber believes that proposed solutions must be sensitive to the potential impact of creating disincentives for development and growth, will require cooperation from all sectors, must be grounded in solid legal authority, will require greater cooperation at the state level, and must include a thorough review of current practices and management structures for infrastructure.

NOW, THEREFORE, The Lincoln Chamber of Commerce:

- 1) Reaffirms its support for greater use of bonding for infrastructure needs and necessary rate increases in water and waste water;
- 2) Supports the development of a comprehensive Infrastructure Financing Business Plan to more fully identify infrastructure financing options;
- 3) Supports treating previously negotiated developer agreements as valid and final agreements; and
- 4) Supports a comprehensive solution that includes reasonable impact fees for collecting off-site costs for new development, provided that there is a commitment on the city's part to develop and adopt other financing components to close the infrastructure gap on a timely basis.

Adopted Unanimously - September 12, 2002 082





**LINCOLN**  
**CHAMBER OF COMMERCE**

September 18, 2002

Lincoln/Lancaster County Planning Commission  
555 South 10<sup>th</sup> Street, Suite 213  
Lincoln, NE 68508

Lincoln City Council  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508

Dear Commissioners and Council Members:

I am writing in my role as 2002 Chair of the Lincoln Chamber to present the Chamber's *Resolution on Infrastructure Financing* and urge your vote in support of the Mayor's Impact Fee proposal.

The Chamber has been involved in several efforts at building consensus on how to best pay for the growth that we seek. In fact, the Chamber's focus on these issues dates back to 1999 when we originally passed an Infrastructure Resolution suggesting that "the community needs to identify creative financing options to aggressively fund infrastructure improvements." The Chamber supports a reasonable impact fee as part of the comprehensive solution for funding infrastructure, if the City is committed to adopting other financing options to close the infrastructure gap.

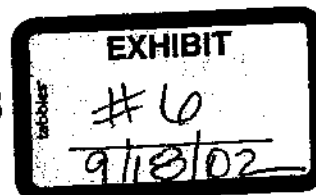
As you are aware the City currently assesses a negotiated exaction for off-site improvements. This exaction is similar to an impact fee, but is done on a subjective and unpredictable basis. In addition, both sides seem to be unhappy with the process. Clearly, it has lengthened the time for completing projects.

The Chamber also understands that infrastructure situation requires that we develop a comprehensive Infrastructure Financing Business Plan that includes a thorough review of current practices and management structures. It is imperative that the City moves quickly on the remaining pieces of our infrastructure financing strategy.

Sincerely,

Gene Brake  
2002 Chairman of the Board

083





September 17, 2002

Lincoln/Lancaster County Plating Commission  
555 South 10<sup>th</sup> Street, Suite 213  
Lincoln, NE 68508

Lincoln City Council  
555 south 10<sup>th</sup> Street  
Lincoln, NE 68508

Dear Commissioners and Council Members:

A scheduling conflict prevents me from being present for the public hearing this Wednesday, but please accept this letter in lieu of personal testimony affirming my support for the Lincoln Chamber's Resolution on Infrastructure Financing and urging your vote in support of the Mayor's Impact Fee proposal.

Over the past two years, I have participated in numerous consensus-building efforts on how to pay for the growth that we want and how to allocate costs equitable among new development and the existing community. I have come to the conclusion that reasonable impact fees should be part of the comprehensive solution for curing Lincoln's infrastructure problems, if the City is committed to adopting other financing options to close the infrastructure gap.

The current "negotiated exaction" for off-site infrastructure costs is, in fact, an impact fee. Though, unlike an impact fee, the city assesses the exaction of a subjective and unpredictable basis. In addition, both sides criticize the process as arbitrary, inequitable, unpredictable and costly. It has lengthened the time required to complete development projects.

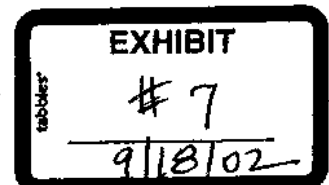
Even with passage of impact fees, the entire community will face a daunting task. Our infrastructure problems require that we develop a comprehensive Infrastructure Financing Business Plan that includes a thorough review of current practices and management structures. For Lincoln to be successful in maintaining the growth, the City must move quickly on the remaining pieces of our infrastructure financing strategy.

Sincerely,



Marc LeBaron

084





Executive Offices  
MAC N8032-033  
1248 O Street  
Lincoln, NE 68508  
402 434-4321  
402 436-2950 Fax

Wells Fargo Bank Nebraska, N.A.

September 17, 2002

Lincoln-Lancaster County Planning Commission  
555 South 10<sup>th</sup> Street, Suite 213  
Lincoln, NE 68508

Lincoln City Council  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508

Dear Commissioners and City Council Members:

Unfortunately, I am unable to be present for the Public Hearing this week on Impact Fees, but ask you to accept this letter in support of the Lincoln Chamber's Resolution on infrastructure financing. *I urge your vote in support of the Mayor's Impact Fee proposal.*

Over the last several years, I have participated in many meetings on infrastructure financing. As a member of the Committee charged with drafting the new Comprehensive Plan, it became painfully clear that we do not have the financial resources necessary to accommodate the growth we have built into the new plan. In my opinion, infrastructure financing is one of the greatest challenges facing our City today. I have come to the conclusion that reasonable Impact Fees should be part of the comprehensive solution for solving Lincoln's infrastructure problems, if the City is committed to adopting other financing options to close the infrastructure gap.

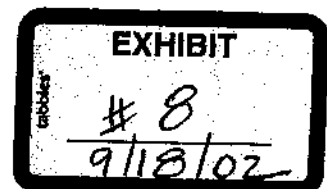
The current process of "negotiating" the cost for each new development is, in fact, a form of an Impact Fee. This process of assessing costs is subjective, arbitrary, inequitable and time consuming. We must find a better way.

Even with passage of Impact Fees, the entire community still faces a daunting task. Our infrastructure problems require that we develop a comprehensive infrastructure financing business plan that includes a thorough review of current practices and alternative financing sources. For Lincoln to continue its growth, we must move forward quickly to complete the overall infrastructure financing strategy.

Sincerely,

Brad Korell  
President

085





OLSSON ASSOCIATES  
ENGINEERS • PLANNERS • SCIENTISTS • SURVEYORS

September 18, 2002

County-City Planning Commission  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508

Dear Planning Commission Members,

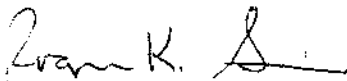
It is critical that the Planning Commission approve the Impact Fee Proposal before you today.

Impact fees are an important matter for this community and the adoption of impact fees as proposed is many years overdue. The current system of negotiating the exactions deemed necessary for off-site improvements is inefficient, time consuming, inconsistent and needs to be changed.

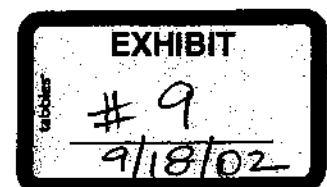
It has taken this community 20 years of under-funding infrastructure needs to get into this position and it will take 20 years to get back on schedule. Impact fees on their own will not solve this shortfall, but they are one of many tools the City needs to enact.

I urge you to approve this matter and to be aggressive in moving future items that come before you that assist the City in solving past and future shortfalls.

Yours truly,

  
Roger K. Severin

086





# Pinnacle Bank

Member FDIC

Mark A. Hesser  
President  
1401 N St.  
Lincoln, NE 68508  
(402) 434-3140  
Fax (402) 434-3129

September 16, 2002

Lincoln/Lancaster County Planning Commission  
Lincoln City Council  
Hand Delivered

Re: Impact Fee Proposal

Dear Commissioners and Council Members:

**I am writing to urge you to vote in support of the Mayor's Impact Fee proposal.** My support is based on two primary facts. One, Lincoln currently has impact fees; they are just assessed by City staff on a subjective and unequal basis. This unfair process has unnecessarily lengthened the time required to bring a new development on-line in Lincoln.

The second is the Mayor's commitment that implementation of this proposal will eliminate the drawn out negotiation and put all developers on an equal playing field. **If the negotiation process does not end and the impact fee simply becomes a second tax, in addition to one paid by developers to get staff support, I will be back here asking you to repeal this proposal.**

I also believe implementation of this proposal is only the first, and in reality a small part, of curing Lincoln's infrastructure problems. In that regard, the following must immediately follow passage of this proposal:

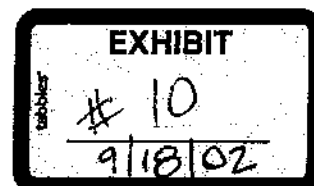
1. Development of a comprehensive business plan for Water and Wastewater Departments. The plan should assure the maximization of bonding capabilities and consider establishing these departments under and Administrative Board similar to the LES model.
2. Form the Mayor's recommended "working group" to work on the overall infrastructure plan for Lincoln and review viable alternative revenue streams for supporting our infrastructure, e.g. gas taxes, etc.

Again, my support of this proposal is based on the commitments of the Mayor and City Staff to eliminate the lengthy and inequitable process currently in place to assess impact fees in Lincoln.

Sincerely,

  
Mark A. Hesser

087



Main  
6145 Havelock Ave  
68507

Pinetree  
7000 Adams  
68507

Downtown  
1401 N St  
68508

Lincolnshire  
1776 South 70th St  
68506

Edgewood  
5651 S 59th  
68516

Pine Lake  
7001 S 27th St  
68516

# REALTORS® ASSOCIATION OF LINCOLN

## Position on Infrastructure Financing and Impact Fees

September 5, 2002

1. The ordinance, as drafted on August 26, 2002 represents only a partial solution to the total infrastructure financing needs of the community. Until the conditions below are satisfied, the REALTORS® Association of Lincoln will continue its opposition to the impact fee ordinance now under consideration.
2. The Mayor's Office needs to provide a complete, detailed outline of the city administration's public commitment to utilize immediately, additional revenue sources including the maximum amount of revenue bonds available, general obligation bonds, water and sewer rate increases beyond the scheduled increases, wheel tax and gasoline tax.
3. If impact fees are a necessary part of an overall solution to the infrastructure finance problem, then a full examination and review of the cost of the current street design standards must be undertaken, to reduce the size of the financing "gap".
4. The use of impact fees collected by the city must be restricted to smaller, more direct benefit areas.
5. Other items that need to be changed in the 8/26/02 draft ordinance include:
  - a. Clarification of which developments will be exempt from impact fees;
  - b. Amendments to assure that developments, which construct improvements (in effect loaning money to the city), will have all costs of such improvements reimbursed;
  - c. Definition of the term "encumbered" as it relates to entitlement of refunds after 10 years;
  - d. Clarification of how the city will keep track of who may be entitled to refunds of fees not spent within 10 years;
  - e. Clarification of whether impact fees will be assessed against projects outside the city limits, and if not, inclusion of language to that effect.

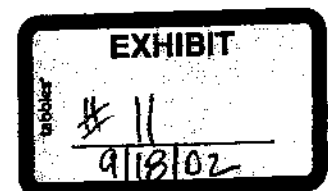
### Rationale:

The Mayor has privately consulted with a small group of developers and interested parties but has not made a public commitment to a detailed outline of the city administration's plan to utilize additional revenue sources.

The association continues to be concerned since the Impact Fee Ordinance is only a partial solution and does not represent a comprehensive solution to Lincoln's infrastructure needs.

The goal of the association is that an entire solution to Lincoln's infrastructure financing needs be mapped out in detail, and that this comprehensive solution creates a situation where infrastructure improvements keep pace with new neighborhood development.

Adopted 9/5/2002





From: Russell Miller  
341 S. 52 St.  
Lincoln, Nebraska 68510

20 July 2002

To: City County Planning Commission

Subject: June 26, 2002 Impact fee testimony

Dear Commission Members,

The impact fee testimony that was given by the realtors and/or developers was interesting both for what was said and what was not said.

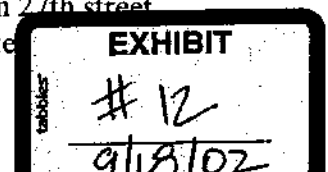
**WHAT WAS SAID:**

Basically, they said "do not break my rice bowl," an oriental saying meaning "do not ruin a person's source of livelihood."

**WHAT WAS NOT SAID:**

1. They did NOT say they will help hold down infrastructure costs by building in northeast and north Lincoln which is considerably closer to city water and sewer plants; i.e., it will not cost as much to bring the trunk lines to north Lincoln as to 27th and Pine Lake Road.
2. They did NOT say that they would make their new lots a little smaller so that there would be more buyers to share in the development costs. At the recent comprehensive plan hearing, this same group was saying their customers were demanding larger lots. Demanding (wanting) and affording are two different things but demands are not a reason that other persons have to subsidize their wants.
3. They did NOT say they would put their developments close to 100% federal and state highways so that the other government entities would pay for the street widening and not just Lincoln taxpayers. Example is Omaha and their interstate projects.
4. They did NOT say that their desires will shift a greater tax and service fee burden on persons who will never benefit from these taxes; i.e. it will break my rice bowl but it will enlarge theirs. Persons on fixed incomes may lose their homes because of the additional taxes and/or service fees needed to subsidize the new developments.
5. One developer testified that since there has not been a sewer/water fee increase for several years, that source of revenue should be tapped, implying that that money source should be used instead of impact fees. I am agreeable to a rate increase if the actual cost of service has increased but not to subsidize trunk lines to housing developments at 27th and Pine Lake Rd. I will remind everyone that sewer lines follow the slope of the land and it is not a straight line down 27th street to the treatment plant at 25th and Cornhusker Highway. (It is more of a circular route

089



## WHAT SHOULD BE DONE

1. IMMEDIATELY impose the entire \$9,000 impact fee on residential development.
2. Completely waive the impact fees on industrial development for the following reasons:
  - a. Without jobs, there will be no demand for housing of any type because people must go where employment is and that employment must pay a wage that permits house buying.
  - b. Industry pays taxes twice: once for property tax and once for equipment tax (it is called personal property tax but it is levied on all equipment).
  - c. Industry has a choice as to where they can locate and it may be inconvenient to move but if the money is right, it certainly can be done.

## EXAMPLES.

1. Cushman is an example of a national company making decisions based on their national interests.
2. TMCO (located at 5th & J St. and locally owned) recently built a 64,0000 sq. ft. manufacturing/warehouse. When I told one of the owners about the impact fees, his response was "no problem, we will just move." This company is a home grown employment center that sells world wide. Twenty years ago, they were occupying about 5,000 sq. ft. Now they are over 100,000 sq. ft. My point is that if these impact fees existed back then, they might have located in another city. That would have definitely decreased the demand for housing because of fewer jobs.
3. Fairbury is an example of a city down sizing because of no jobs, not because it is bad place to live.

My opinion is that jobs are what provides the money to pay taxes, sales taxes, etc. Protect the jobs and make the job holders pay for their amenities.

Thank you,

Russell Miller  
phone 488-2568

copy to: Mayor Wesely  
Lincoln City Council

*Testimony of Larry K. Zink on behalf of University Place Community Organization and the Fair Share Alliance  
at the 9/18/02 Planning Commission Public Hearing on Impact Fees*

Good evening. My name is Larry Zink and I am the current President of the University Place Community Organization and a board member of the Fair Share Alliance. The University Place Community Organization is one of Lincoln's oldest neighborhood associations and represents one of largest organized neighborhood areas in our city.

The University Place Community Organization is concerned about the drain of public resources from existing neighborhoods to support the infrastructure development needs on the fringes of our city. It was because of this concern, that we were one of the first neighborhood associations to go on record in support of impact fees and we have been active in the Fair Share Alliance since its inception.

The huge gap our city faces in financing our public infrastructure maintenance and development needs is a critical public issue and I commend the Commission for holding this public hearing to solicit the views of the community. The Fair Share Alliance has also attempted to stimulate a public dialogue on this issue by holding a number of public meetings, inviting developers to our meetings, and by organizing a public forum with all sides represented.

It is appropriate that the Planning Commission is one of the first public bodies to officially consider infrastructure financing issues and impact fees in particular. It is appropriate because while impact fees are clearly a public financing issue, they also have significant public policy implications for our city's long-term health, character and growth. As the public body entrusted with the stewardship of guiding our community's long-term growth and health, the Planning Commission is a fitting place to discuss these issues from that perspective.

In that regard, I believe that this may be an appropriate forum to hopefully lay to rest one of the charges that has emerged in the public debate on the issue of impact fees. The claim has been made that those of us who support impact fees are trying to divide our community. In our nation there is both an established legal and public policy tradition, that incorporated communities have the right, and indeed the responsibility, to define the conditions under which new areas will accepted into their corporate city limits. It is in this democratic tradition, that our existing corporate community (the City of Lincoln) has a responsibility to debate and define the conditions under which we will accept new areas and assume new responsibilities for maintenance of the public infrastructure and the provisions of services for those areas. Most of the areas that would be subject to the proposed impact fees are outside our city's corporate limits and will be seeking to be incorporated into our city. The current public policy debate is not an attempt to divide our city, but is instead a public stewardship discussion of the conditions our city should set before incorporating new areas into its long-term responsibilities. In this regard, the possibility of requiring impact fees is as appropriate as standards for streets and water mains. Again the Planning Commission is the primary steward of this public policy process.

At the heart of our city's discussion of impact fees must be a consideration of why public resources should be used to subsidize private development on the outskirts of our city. The city's Infrastructure Financing Study Advisory Committee, after studying the issue in depth, concluded in their Final Report that growth costs the existing community. This advisory body included representatives of a cross-section of our community, including developers. The study by Duncan Associates concluded that the net capitol costs for the city to provide the average new single-family dwelling with the arterial streets, water, wastewater and parks totaled \$9,040. If our city does not institute a system of impact fees, the citizens of Lincoln will be subsidizing private development on the outskirts of our city to the tune of approximately \$9,000 for each single-family dwelling developed and sold. Perhaps one of the clearest signs of a public subsidy is "the sky is falling" prophecies that can be heard from special interests when there is serious talk of removing a public subsidy. As our city has begun to consider impact fees as a way to end or reduce public subsidy of the infrastructure required for private development, we are clearly hearing those dooms day voices from the development interests in our city.

In a free market economy such as ours, there is a general consensus that public subsidies of private ventures are to be avoided unless there is a compelling, overriding public good or goal that justifies that subsidy. This view holds that these subsidies tend to skew the economic system and ultimately result in inefficiencies. This point of view is widely held and advocated by most of the private sector in our country. Under our current system, the city effectively provides huge subsidies to private development on the outskirts of our city by paying for most of the offsite infrastructure necessary for that development. Impact fees provide a means to end or significantly reduce this subsidy. Therefore, it is appropriate to seek an understanding of the overriding public good that might justify a continuation of this subsidy of private development. In this regard, it is useful to look at some of the commonly shared goals of good community planning and explore how these subsidies might contribute to the realization of these goals.

091

EXHIBIT

# 13

9/18/02

1. **Does the subsidy of private development on the outskirts of our city promote the maximum use and return on our existing investment in public infrastructure?** I think any objective evaluation of this question would have to conclude that the current subsidy has the opposite effect. Indeed, development on the edges of our city is the most costly and makes the least efficient use of our existing infrastructure. In addition to streets, water and sewer systems, we must also build new schools, libraries, and fire stations.
2. **Does the subsidy of private development on the edges encourage reinvestment in and maintenance of our existing neighborhoods and, as such, seek to avoid the problems of decaying inner city neighborhoods that so many urban areas are now struggling to reverse?** Again, I think we would have to say that the net effect of this subsidy is the opposite of this laudable goal. This subsidy serves to artificially lower the true costs of development on the fringes of our city, and acts to siphon both public resources and private financing away from reinvestment in and maintenance of our existing neighborhoods. How many blocks of sidewalks in our existing neighborhoods could be rehabilitated for the cost of just one mile of a new arterial street.
3. **Does the subsidy of private development on the fringes of our city support the maintenance of healthy neighborhood businesses and services within our existing neighborhoods?** Does it really benefit our city to subsidize the development of Home Depots and WalMarts at the expense of our neighborhood Ace and QP hardware stores? It may be that these marketing trends are inevitable, but does that mean we should expedite them with infrastructure subsidies?
4. **Does the subsidy of private development on the outskirts of our city promote smart growth policies of energy efficiency, environmental stewardship, and healthy self-contained neighborhood groupings?** To the contrary, development of this type, makes our city less energy efficient as we must drive personal vehicles for every service, valuable farm lands and fragile ecosystems are consumed by urban sprawl, and existing neighborhoods suffer the impact of upstream development in their watershed.
5. **Does this subsidy of private development on the outer fringes of our city act in a way to better the lot of low-income citizens?** In the recent public debate on this topic, there has been much talk about affordable housing. Affordable housing is a nebulous concept at best, but you and I know that there are very few low-income folks living on the edges of our city in amongst the \$200,000 to \$400,000 homes. Regardless whether impact fees are enacted or not, the vast majority of low-income folks in our city will continue to live in the older existing neighborhoods. Without impact fees low-income citizens will end up subsidizing these \$400,000 developments through the higher taxes and utility fees that will be required to finance infrastructure development on the outskirts. At the same time, these subsidies encourage the migration of critical services to the outer rings of our community where they are less available to folks who must rely on public transportation. By encouraging development on the outskirts, these subsidies effectively support dis-investment in the housing stocks in our existing neighborhoods, this is the housing stock in which low-income people reside.
6. **And finally does this subsidy of private development on the edges of our city promote jobs and the local economy?** This is certainly an argument that those who oppose impact fees try to make. But I have yet to see a credible study put forward that substantiates that claim. Does development activity create jobs? Certainly. Would development activity cease if impact fees were phased in? No one has demonstrated that happened in the other 400+ cities that have impact fees. Are not the jobs that would be created by encouraging reinvestment in our existing housing stock and neighborhood business districts equally as desirable and economically healthy as those created by development on the fringes? I believe more so. If we are to provide subsidies for jobs, I believe the greater community good calls for these subsidies to be targeted to existing neighborhoods, instead of on the outskirts of our city.

As I noted at the beginning of my remarks, the Planning Commission is the public body entrusted with the stewardship responsibility of guiding our community's long-term growth, health and overall character. Impact fees, used in a reasonable manner, can further those aims. The proposed impact fees ordinance is consistent with both the Comprehensive Plan and sound community planning principles. The adoption of the proposed impact fees ordinance will provide public policy makers with another tool that can be used in their efforts to shape a balanced overall approach to infrastructure financing. The University Place Community Organization joins with 14 other neighborhood organizations, the Fair Share Alliance, and the Chamber of Commerce in urging the Commission's support for the impact fee ordinance.



# Lincoln Independent Business Association

P.O. Box 5784 • 709 No. 48th St. • Lincoln, NE 68505  
Phone: 466-3419 • Fax: 466-7926 • www.liba.org

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## Impact Fee Resolution September 12, 2002

The Lincoln Independent Business Association has voiced concern about the city's infrastructure backlog for over 20 years. Our organization is pleased that city government and the community are now seriously addressing this issue. The City's August 26 proposal for Infrastructure Financing acknowledges the need to increase utility rates, to phase in new homeowner costs, and to standardize the assessment process for developer's off-site improvement costs. Most importantly the need to generate revenue from new development as well as the public at large is addressed. This philosophy supports the notion that Lincoln is a growing community and we must work together as a community to address the financing of our infrastructure.

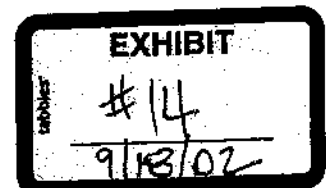
Should the current proposal go forward, we believe that two aspects need to be better defined.

1. The four "benefit areas" are too broad and a more direct benefit clause would be appropriate.
2. Arterial streets are for the most part a city responsibility and that the majority of the cost should be financed with General Obligation an/or Revenue bonds. This is the most equitable method of financing a capital asset that benefits all citizens.

As proposed, Impact Fees are an uncontrolled tax levy that can be increased or decreased by future administrations without citizen oversight. The legality of imposing impact fees in the manner proposed is being called into question and we would like to see a definitive resolution prior to enmeshing the city in any potential court actions. Defending a poorly conceived ordinance would be costly and consume resources that we can ill afford to lose.

LIBA opposes the current proposal but believes that it is the first step in what must be a multi-step process leading to a more complete solution to the funding gap. We would support the implementation of a Working Committee comprised of industry selected individuals to develop a more comprehensive solution to the problem.

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I served on the City Council for 12 years, 6 years as the chairman. I have resided in Lincoln for 55 years and have had my own business for 50 years. I have observed many events, some for the betterment of Lincoln, and some that were not.

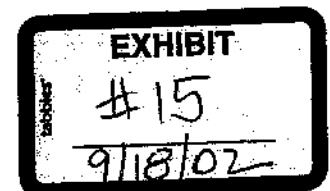
What is before you today does nothing for the Lincoln economy. I would like to share with you ten (10) concerns.

1. We have fallen behind on our infrastructure needs because of the absence of a business plan to meet the needs for a total community.
2. That a political effort is used to divide the community, not bring it together. If one segment has a problem, then we all should have a solution. What is before you is not a solution.
3. I will quote the second paragraph on Page 13 of the report prepared by Stephen Henrichsen, A.I.C.P. – “Without impact fees, the community has few viable or desirable choices. One option would be to significantly raise wheel taxes and utility rates in order to provide for the adequate resources. However, this would place the vast majority of the burden on the community as a whole, which is not in keeping with the goals of the Comprehensive Plan to have a balanced approach. Another option is to do nothing, which would continue the current system and would ultimately provide inadequate resources for maintenance and new development – a future the community does not desire.” End of quote

The city asked the four business groups most affected to make recommendations. On December 5<sup>th</sup> and May 30<sup>th</sup> the written suggestions were given to staff, written answers were expected, none have been received. We need a business plan by a business planner such as a CPA or people experienced in profit and loss.

4. Any plan should have the legal authority to do what is proposed. There is serious doubt that this authority is granted by the State for this plan.
5. We have a city utility (L.E.S.) that does get its job done, primarily because it is well managed. It is time to convert water and sewer into that kind of a business plan.
6. One of the reasons we have fallen behind on street needs is we continue to use street funds for other purposes. South 84<sup>th</sup> was supposed to be completed in 2000. It is now held up to redesign the project to include 2 bicycle under passes. This total redesign will reflect an additional cost of approximately 1,250,000, which will come from street funds. Tunnels and paths are desirable, streets are essential. I do not see congested bike paths – I do see congested streets.
7. The plan before you is not a solution, it identifies the scope of the problem with a vague and partial beginning solution. If a businessperson were to take this plan

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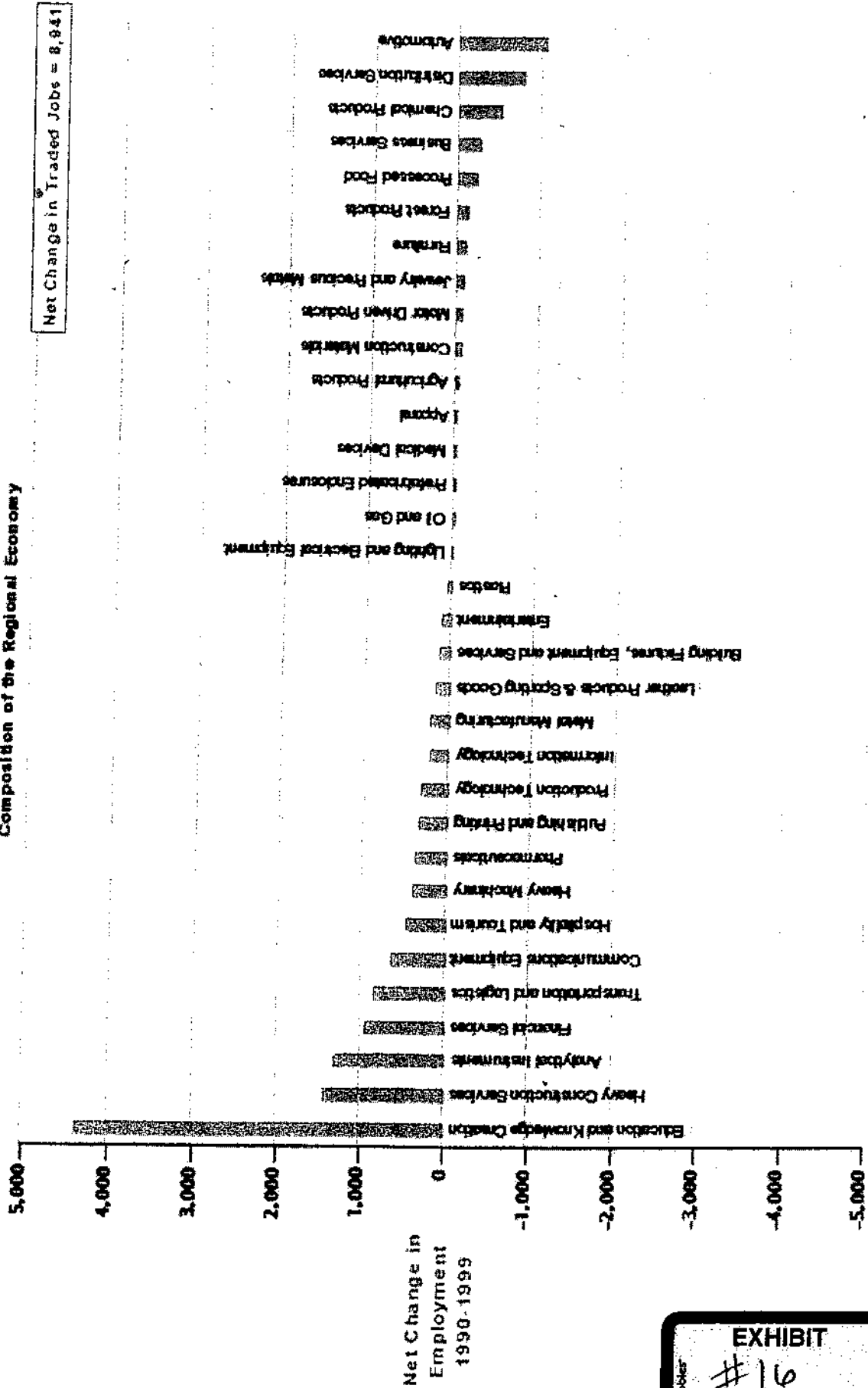
into a lender - where there is a large liability, a small projected revenue and a foot note to the application, trust me – in all likelihood it would be turned down.

8. I have chaired the tax efficiency committee for LIBA for some time now. I have reached a conclusion. We are not nearly as short of tax dollars as we are short of the prudent use of tax dollars.
9. The Lincoln economy is in a stressful condition. We continue to lose jobs and we continue to dwell on desirable frills rather than adequate police protection, basic needs and adequate infrastructure. The city just decided to spend 900,000 in tax dollars to rejuvenate a mall, and we still are cutting back on essential needs.
10. I believe we do need to address the needs of the total community. The place to start is to put this proposal on pending and develop a solution using sound fiscal responsibility that will assist a strong economy, rather than a plan that resists investments in Lincoln's future and places a burden on the young – the elderly and everyone in between. If we continue on the path of losing jobs, all of Lincoln has a bleak future. This plan will eliminate jobs.

I am concerned about Lincoln's economy. I hope you are also concerned.

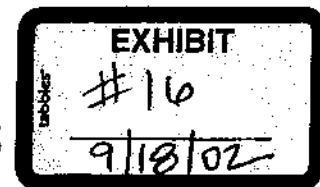
*I am in 65 families on the job now*

Lincoln, NE Metropolitan Area  
 Job Creation by Cluster, 1990-1999, Using Narrow Cluster Definition  
 Composition of the Regional Economy



Source: Harvard University

960





Planning Commission  
City of Lincoln  
County of Lancaster  
Subject: Impact Fees  
Sept. 18, 02

Danny E. Walker  
427 "E" ST.  
Lincoln, Nebr.  
68508

Good Evening;

I'm here to speak in support of the INITIAL recommendation put forth within the contents of the Duncan Report regarding Impact Fees which amounted to nine thousand dollars. I totally oppose any lesser amount.

In addition, I might add I'm very proud of the fact that the South Salt Creek Community Organization chose to take the same position. This position was taken due to the fact the neighborhood happens to be one of the core neighborhoods that has suffered with lack of improvements as a result of (in part) new development..

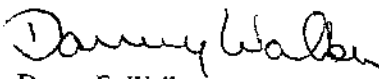
However, it would be wrong to place total blame for the current supposedly shortfall in impact fees on the developer/builder community. The current situation also points to very poor management and monitoring by past and present City of Lincoln Administrations who in fact has over the years catered to the new development community by simply believing that developers/builders pay their fair share. I'll use as an example the following: New water tower located in the proximity of 84<sup>th</sup> and highway 2. as a result of new development in the area. Cost= 3.864 million dollars. Developers share= 800 thousand dollars plus dismantling of the old tower..The City staff thinks this was a fine deal..For whom I ask?

Next, lets talk streets: Where would street improvement be now if a very large amount (in the millions) of street funds were not transferred over to the ballpark.. Who has their finger in the wheel tax monies when only 22 to 25 % of the wheel tax money actually goes towards streets. I might add, when anyone on city staff is asked about the aforementioned figures not only can they not produce said figures but they also seem to not know who's smart idea it was to seemingly abuse the wheel tax funds in such a manner.

In closing, I find it quite amusing that the business community seems to be very alarmed in regards to the involved neighborhoods becoming organized regarding the impact fees issue when one considers the fact that these same neighborhoods have contributed to new development over the years and also have in fact suffered because of same with little or no improvements in the areas they reside in..

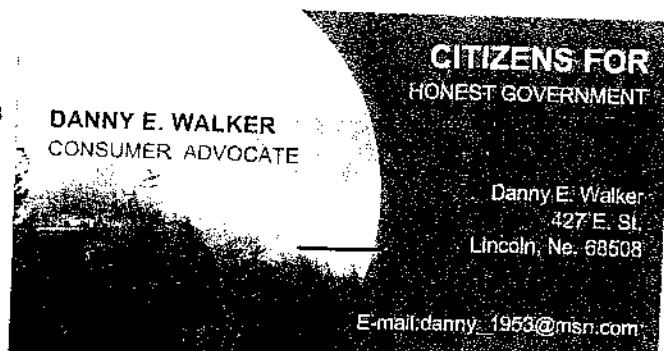
Last but not least, I'll advise aforementioned neighborhoods to use caution and not get involved in a political ballgame..I do believe there are better ways to organize neighborhoods with more stress being put on independence..

Thank You

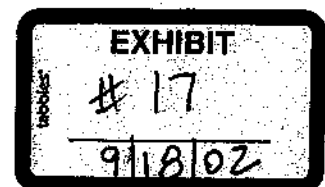
  
Danny E. Walker

6

Subject: Impact Fees



08



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PIERSON, FITCHETT, HUNZEKER, BLAKE & KATT  
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November 2, 2000

Mark Arter, Chair  
Infrastructure Financing Study  
Advisory Committee  
555 S. 10<sup>th</sup> Street  
Lincoln, NE 68508

Dear Mark & Members of the Committee:

On behalf of the Home Builders Association of Lincoln and the development community, I want to thank you for affording us the opportunity to have input in the process of formulating recommendations for financing infrastructure. As I mentioned at your last meeting, this is a problem which is somewhat complex, but is a nice problem to have.

Before listing our suggested means of resolving the infrastructure financing problem, we think it is appropriate to disclose the premises upon which our recommendations are based.

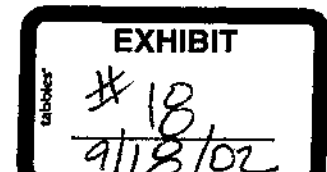
A. Enterprise Funds. We believe that the financial information available from the water and wastewater enterprise funds demonstrates that there is ample funding available to cover the City's portion of the cost of extending water and wastewater lines to newly developed areas. Lincoln Electric System is considered by many to be a model of a well-run utility. Both the water and wastewater enterprise funds are in much stronger position than Lincoln Electric System.

B. Storm Water. There is currently a need for storm water improvements in various parts of the city. Both the currently identified projects and maintenance of newly constructed detention cells are beneficial to the entire community. A broadly based means of financing storm water improvements and maintenance is both necessary and appropriate.

C. Arterials. We believe there is consensus that street construction is behind the curve and ought to be accelerated. New development may properly be asked to assist in construction of arterials at the fringe, but a broadly based means of financing construction to address existing deficiencies is appropriate.

D. Parks. Lincoln is fortunate to have an excellent park system. Although we have not seen the most current numbers, we believe it is still the case that Lincoln is well above nationally recognized standards in terms of park acreage per capita. We believe our park system is one of the

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things which contributes to a high quality of life in Lincoln. We also believe that as we look forward it is appropriate to at least consider the role that private open space plays in contributing to that quality of life.

E. City Commitment. No matter which options are chosen to finance the various infrastructure needs, it must be made clear that a serious financial commitment must be made on the part of the City of Lincoln to provide needed infrastructure. The City must renew its commitment to prioritization of budgets to bear the share of infrastructure costs fairly attributable to the general public. Perhaps the most troubling aspect of the problem you face is that Lincoln is growing at a rate of 1 to 1.5 percent per year. It is simply not possible to make up for existing deficiencies with fees on this small group of new homeowners.

We strongly suggest that some sort of goal be set which will provide a means of measuring the effectiveness of any new infrastructure finance policy. We think a realistic goal is to attempt to compress the City's six-year capital improvements program into a four-year time frame. With that background, we would like to offer the following items for consideration as the means to finance public infrastructure as we move forward.

1. Water and Wastewater. Both the water and wastewater enterprise funds have sufficient unencumbered assets and bonding capabilities to accomplish the goal of accelerating the six-year capital improvements plan into four years. We urge the Committee to recommend the use of revenue bonds for this purpose. We believe that revenue bonding would not only provide more than adequate cash to build infrastructure, but that it could be done without requiring any rate increases.

As a limited alternative, we would suggest the possibility of increasing tap fees by a modest amount.

2. Storm Water. We suggest that an additional fee be added to water and wastewater bills for all users to fund storm water improvements. We also believe that this revenue source should be used to finance the City takeover of maintenance of storm water detention facilities.

3. Streets. We strongly urge that you recommend using revenue bonds to accelerate the 10- and 20-year road programs identified in the Comprehensive Plan.

We also suggest expanding the wheel tax to become a county-wide tax. Many projects require city/county cooperation, and this additional source of revenue at the county level will facilitate acquisition of adequate rights-of-way and construction of improvements in the county.

We also suggest that a formula be developed for an impact fee for the purpose of constructing arterial roadways in newly developing areas. We suggest that new development be responsible for construction of one-half of a three-lane (two through lanes plus left turn lane) arterial

around each section of land. We have not developed a precise formula for such a fee, as we have understood that to be beyond the scope of your present task.

4. Special District Financing. We strongly urge that you recommend a policy of utilizing special district financing for water, wastewater, storm water, and street improvements in instances where there are multiple owners of land through which such improvements must be constructed. This is especially true in areas where infrastructure must pass through land which is not yet proposed for development. It is inherently unfair for a landowner to benefit from either an adjoining developer's expenditure or the City's expenditure of funds resulting in infrastructure being constructed which clearly benefits the landowner's property without any financial contribution from that landowner. Special districts enable the City to require contribution proportionate to benefit.


5. Parks. We suggest that there should be a system of fees or dedication of land in lieu of fees for parks. Any credits for dedication of land in excess of the obligation of a particular development should apply to any other impact fees which may apply to that development. Credit should also be allowed – at a higher rate – for private open space provided at a ratio equal to or greater than the park ratio.

6. Basin-Wide Districts. We believe the City should pursue legislation to permit special districts for assessment of wastewater and/or storm water improvements on a drainage basin-wide basis.

7. Legislation. We think that legislative authority for any impact fees is somewhat questionable and relies upon interpretations by courts in other jurisdictions of statutes which may be similar, but not identical to Nebraska's. We think that to the extent the City wishes to incorporate new fees on new development to finance infrastructure, that legislative clarification of the City's authority to do so should be pursued.

Please feel free to contact the Home Builders Association or myself with any questions or if you require clarification of any of these comments.

Sincerely,

  
Mark A. Hunzeker  
For the Firm

MAH:la

(G:\WPData\Mh\HBAL - Infrastructure - Arter 11-1 ltr.wpd)

it's time we got our priorities straight.

Lauren Bongard, Lincoln

### Maybe no one's to blame

In response to the letter to the editor (LJS, Sept. 2), I am so pleased that the writer, a parent, did not feel that the "wayward" kindergarten children should be prosecuted for playing "I'll show you mine if you show me yours." I am stunned, though, to read that the writer was "outraged" that the parents were not. This, particularly, because the parents were "grossly negligent" and the children's "damage" needs to be placed on the proper party's shoulders.

Was it pure coincidence that the letter referred to above was preceded by a letter regarding the lack of common sense and personal responsibility not exhibited by those suing the fast-food restaurants for their health problems? I see the same theme running through both, albeit the opposite ends of the spectrum. The first letter exclaimed in shock that people no longer take responsibility for their actions: The second exclaimed in shock that people were not there to take the blame.

I propose that in our lives, there are instances when no one is at fault, and there is no blame! Is this really such an odd notion? Sometimes our children are curious about the world and, in their innocence, do things that an adult would never consider. Why should blame be passed around for such a normal activity? Just because this was sexual in nature?

Good grief, if every parent of every child that participated in the above-mentioned were jailed, we'd have very few parents roaming about free. Also, if every child who ever participated in the above-mentioned were psychologically damaged, then I figure about 75 percent of our population is in big trouble!

Kathy Bunn, Lincoln

### Fees have hidden price

Having moved to Lincoln from Cary, N.C., in the fall of 1999, I have a unique perspective on our impact fee debate. Lincoln city officials point to Cary as an impact fee success. While the data offered

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by Allan Abbott of Public Works appears to show no effect on growth because of impact fees, the numbers as presented don't tell the whole story, insofar as Cary is concerned.

During the 1990s the Research Triangle Park, the East Coast's equivalent of Silicon Valley, exploded with the Internet boom. High-paying, high-tech jobs were in abundance. A tremendous influx of residents resulted. Impact fees seemed a reasonable way to ensure these newly arrived, somewhat unwelcome Yankees pay their "fair share" of city infrastructure costs.

This approach had the unintended effect of displacing affordable housing to outlying communities: Holly Springs, Wake Forest and Rolesville. These communities grew even more explosively than Cary. Families priced out of Cary's residential market still used the roads and services in Cary, but did so without fully supporting them as tax-paying residents; they paid no property tax, wheel tax and less sales taxes living elsewhere. Is this paying one's "fair share"? Would it not have been better to focus city spending upon basic services, rather than pilfering infrastructure funding to provide other programs while driving up the cost of housing through impact fees?

I urge my fellow citizens of Lincoln and our representatives to carefully consider the true cost of impact fees to the community as a whole.

E. Arthur Robertson, Lincoln

EXHIBIT

tabbies

# 19

9/18/02

D.C. CONCRETE CONSTRUCTION, INC.  
1510 SW 36<sup>TH</sup> STREET  
LINCOLN, NE 68522  
432.8838 OR 438.3763

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LANCASTER COUNTY PLANNING COMMISSION

SEPTEMBER 17, 2002

As I sit writing this letter, I ponder the future of building and growth in our fine city. As you are aware, there is a deficit in the city budget. How can we rectify this problem? Will the new proposed Impact fees help this cause. What if they don't alleviate the problem and we still have a short fall? Then what? Higher fees? Higher property taxes? I feel there must be a better solution for this than any of these choices.

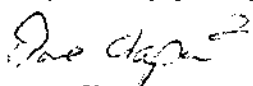
City spending has to be changed. How about putting a stop to the funding of items such as the newly built multi-million dollar bridge to Hay Market Park...the Antelope Water way, and the many other projects that I could mention. City spending must be controlled. As a contractor, when I do job for another person, be it private owner or builder, I have to stay within my budget. Why can't the City of Lincoln do this? The City needs to answer to its taxpayers. Stop the over spending! Case and point--several years ago, Public Works purchased a new backhoe loader; bids were submitted and the lowest bid was not honored. The backhoe purchased was \$20,000.00 more. Why? Because the brand of machine chosen was 'preferred'. I can think of many other items that the extra \$20,000.00 could've been spent on.

As I stated earlier I ponder the future. My business is down 20% from a year ago. Why you ask? We all know that 9-11 has been a factor in more ways than one. With the uncertainty of the stock market today, and lack of consumer confidence, people and businesses are curtailing spending for new construction, and growth. I fear impact fees will completely aggravate this already touchy situation.

When I started my business in the spring of 1995, I looked forward to a new and challenging future. I have enjoyed being a small business owner in Lincoln. My company has experienced growth in every year of existence except for the year 2002. Let us hope that next year will be a growth year again, and I can hire employees to help the economic cause of Lincoln.

In summary, I am certain that impact fees will again lower my business for next year. Can I afford to lose another 20% of business? Possibly lose 2 more employees next year like this year due to the lack of new construction and lack of available work? Will D.C. Concrete continue to exist in year 2003 and beyond?? With the closing of Cushman, a possible reduction at Goodyear, and the move of The Gallup Organization to Omaha, more jobs will be lost. We need to retain these fine established businesses and people. New growth within the city is needed. Could impact fees discourage growth in Lincoln? I certainly believe it could and will.

Respectfully yours,

  
Dave Chapin  
President and CEO  
D. C. Concrete Construction, Inc.



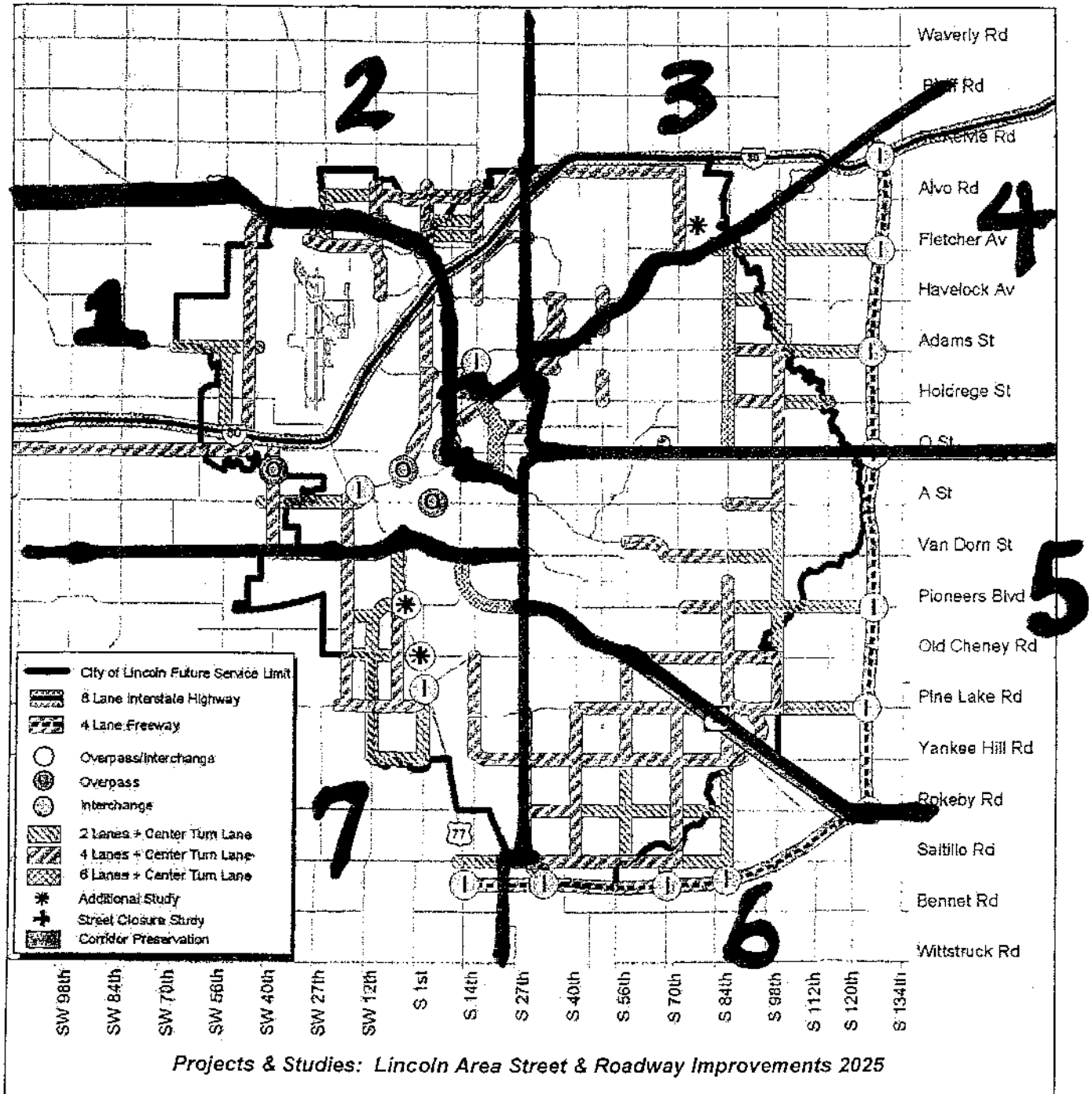
27.82.070 Impact Fee Funds.

(a) Creation of Benefit Districts. Impact fees shall be spent only within the benefit district in which they were collected, except that water and sewer impact fees may be spent for water and sewer impact fee facility improvements outside the corporate limits of the City which benefit the district in which they were collected. There are hereby created seven benefit districts, as follows:

<u>Infrastructure Impact Fees</u>	<u>Collection Account District</u>	<u>Expenditure Benefit District</u>
<u>Arterial Streets</u>	<u>Collected within 7 benefit districts-- See Attached Map</u>	<u>Same as collection</u>
<u>Water:</u>		
<u>1. Water Treatment Plant, Storage, Pressure and Transmission Lines</u>	<u>Collected City Wide</u>	<u>Same as collection</u>
<u>2. Water Distribution Lines (18" and 24" lines)</u>	<u>Collected within 7 benefit districts-- See Attached Map</u>	<u>Same as collection</u>
<u>Wastewater</u>	<u>No Change</u>	<u>No Change</u>
<u>Parks &amp; Trails</u>	<u>Collected within each Section</u>	<u>Spent within the Section or one mile of the applicable Section</u>

- (1) Water Impact Fee Benefit District shall be the area served by the Lincoln water system;
- (2) Wastewater Impact Fee Benefit District shall be the area served by the Lincoln wastewater system;
- (3) Northwest Arterial Street Impact Fee Benefit District shall be the incorporated area of the City of Lincoln located north of the centerline of O Street and west







(1) To acquire land for and/or acquire or construct Impact Fee Facilities or Impact Fee Facility Improvements of the type reflected in the title of the account and in the location specified in Section 27.82.070(a); or

(2) As described in Section 27.82.080 (Refunds) or as described in Section 27.82.090 (Post-Ordinance Agreements), or as described in Section 27.82.100 (Pre-Ordinance Reimbursements), or

(3) To pay consultant fees to update the impact fees.

Section 8. That Title 27 of the Lincoln Municipal Code be amended by adding a new section numbered 27.82.080 to read as follows:

**27.82.080 Refunds of Impact Fees Paid.**

(a) Passage of Time. Any monies in any impact fee account that have not been spent or encumbered within ~~eight~~ years after the date on which such fee was paid shall, upon application to the Impact Fee Administrator by the fee payor, be returned to such person with interest since the date of payment at the rate earned by the City on the fees. Fees shall be deemed to be spent on the basis that the first fee collected shall be the first fee spent. Within ~~six~~ months of the end of the ~~eight~~-year period from the date on which the unspent impact fee was paid, the Impact Fee Administrator shall notify the fee payor of eligibility for a refund at the address listed with the Impact Fee Administrator. In order to receive such refund, the fee payor shall be required to submit an application for such refund within ~~twelve~~ months after the expiration of such ~~eight~~-year period. Any monies in an impact fee account for which no application for a refund has been timely made shall be

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1     **27.82.090     Post-Ordinance Developer Agreements Regarding Impact Fee Facilities.**

2             (a)     General Provision. After the effective date of this ordinance where a  
3     proposed development includes or requires the construction of Impact Fee Facilities in  
4     connection with such development, the City and developer may agree in writing to have  
5     the developer participate in the financing or construction of part or all of such Impact Fee  
6     Facilities.

7             Such agreement may provide for future cash reimbursements to the  
8     developer for the developer's participation in the financing or construction of the Impact  
9     Fee Facilities consistent with the following requirements:

10            (1)     Reimbursement for each type of Impact Fee Facility financed or  
11     constructed by the developer shall be paid from impact fees ~~which would become due and~~ <sup>with interest</sup>  
12     payable under this ordinance within the ~~benefit district~~ for that same type of Impact Fee  
13     Facility ~~or from other available revenue sources.~~

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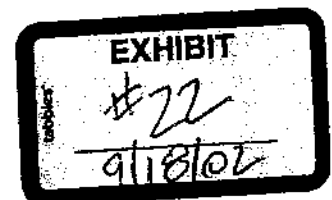
14            (2)     No reimbursement shall be paid from impact fees received for a  
15     different type of Impact Fee Facility or against any other monies due to the City from such  
16     development and the reimbursement from impact fees shall not constitute general liability  
17     of the City.

18            (3)     The reimbursement shall be calculated and documented as follows:

19            (i)     The value of land dedicated or donated shall, at such person's  
20     option, be valued at (a) 100% of the most recent assessed value for such land as shown in  
21     the records of the County Assessor, or (b) the land's fair market value based on its  
22     appraised land value on the date of transfer of ownership to the City, as determined by a  
23     certified appraiser who was selected and paid for by such person, and who used generally

Proposed Amendment  
Discretion to Reduce Impact Fees

(i) Discretion to Reduce Impact Fees: In order to promote the economic development of the City or the public health, safety, and general welfare of its residents, the Mayor may agree to pay some or all of the impact fees imposed on a proposed development or redevelopment from other funds of the City that are not restricted to other uses. Any such decision to pay impact fees on behalf of a proposed development shall be at the discretion of the Mayor and shall be made pursuant to goals and objectives previously expressed by the City Council to promote such development.



Date: August 8 (An even watering day so I have my sprinkler going!!!!)

To: Lincoln/Lancaster County Planning Commission  
Greg Schwinn, Chair  
W. Cecil Steward, Vice-Chair  
Steve Duval  
Gerry Krieser  
Patte Newman  
Tommy Taylor  
Jon Carlson  
Mary F. Bills-Strand  
Roger Larson

From: Ed Patterson  
As an Individual Citizen of Lincoln

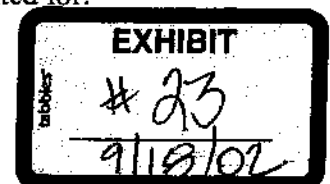
Re: Impact Fees

I am writing this letter on Impact Fees to you as an individual despite having been, over the years, president of the Malone Neighborhood Association several times, and through it associated with the loose knit movement called One Community Alliance. Both of these groups have members who are either active participants in the Democratic Party, or Republican Party, or have positions of management responsibility in firms sensitive to public relations here in Lincoln, or at the state level. As such it would be asking a lot for them to come out publicly in support of a facts based impact fee structure, as opposed to a compromise impact fee covering in the ballpark (no pun intended) of 10% of the net financial impact of new development.

The ballpark, since it was done by the same City Hall Administration now proposing to manage negotiation of the Impact Fee Structure, might be a good example of how the cost of impact could be done more responsibly in the future. One Community Alliance related individuals have pointed out repeatedly in public meetings for approximately a decade that Lincoln needs a Storm Drainage Run Off neutral, and Water Way Net Rise neutral development policy covering the entire Salt Creek Water Shed. To the credit of technical troops in City Hall such a policy was researched, formulated and brought forward for approval by government several years ago. Mayor Wesely was publicly in support of this policy until it was discovered that the University of Nebraska's proposed ballpark development, would violate the policy in two ways:

- o Restrict the flood stage flow cross section of Salt Creek, that is, result in significant net rise due to blockage of storm flow at flood stage.
- o Reduce temporary water retention due to fill brought in for the parking lot and other structures.

This did not mean that the ball field could not be built as proposed, but rather that it would cost more than originally envisioned, once the added costs of compensatory flow channel and water storage excavation were accounted for.



Now, these costs actually will be paid. There is no free lunch. It is just that, rather than the University and allied private sector interests in the development paying the cost, the businesses and homeowners within about half a mile of the ball park will pay higher flood insurance, and incur a deduction in property value, in perpetuity.

We have for several decades described the 'Fair Share' principal in public meetings as follows:

- Neighborhoods should get their per capita fair share of capital improvement and maintenance dollars, support for local schools, police, fire protection, and so on.

So for example a neighborhood without the campaign contributions wherewithal of suburban development dollars, should not be asked to give up its schools, live with potholes in its streets, while being taxed at (pre Ed Jacksha) roughly 3% per year of the market value of its property, only to watch this money perennially dumped into development 10 miles or more from the roots of City Services. To get out of the realm of expedient compromise, and into the realm of fact, by comparison, the total tax levee in Denver is less than half of one percent, and for example, among other taxes, gasoline taxes are less there too.

- Neighborhoods should be structured to support their fair share, and no more than their fair share of the financial, and social assistance burden of maintaining the city.

So for example established neighborhoods should not be made to accept all the group homes, public housing, and street people that the contributions driven political process can sweep out of an adjoining area of the city.

As current president of the Malone Neighborhood association, and looking at what politicians have done for example with the Cigarette Tax money, or the FICA Payroll Deductions for the Social Security Trust Fund, I could say that there would need to be language in any proposed Impact Fees Ordinance specifically earmarking Impact Fees for Infrastructure, before the Malone Neighborhood Association would be likely to Approve an Impact Fee Ordinance.

Around 1990, I was exposed personally to the fact that not only can insider interests in Lincoln politics redirect tax dollars for personal use, but they can also reach out and take large tracts of land for personal or corporate use, essentially without paying for it. A fall out of that personal experience was that I was forced to initiate a survey of essentially the entire contiguous 48 states for replacement sites for what had been taken from me.

In the early 1990's I found that for example Golden, Colorado had a \$6,000 per unit 'tap fee' for hooking new residential units onto city services, and Boulder had both substantial tap fees and a 60 unit per year cap on total new apartment construction in the city limits. Both Boulder and Golden have since moved to a near total ban on new apartment units, and the tap fees for new residential units are well over \$10,000. Both of these cities have esthetic fresh snow melt creeks (not to be confused with Antelope 'Creek,' which is actually a usually empty, drainage ditch) running through the middle of town. But to keep from pumping these dry, they instead pump water from points many miles away in mountain reservoirs, and these too now have reached their limits, hence a reality, as opposed to politically, based limit on the form that 'growth' can take in these cities.

By contrast in Lincoln I found at the time that fringe developers, turning options on cornfields into gold through their connections to the City Council, were paying essentially no impact fees. Having been a 'Fair Share' advocate for some time, I began to ask people here why this was the case. I was told among other things that we get our water from an essentially infinite source, the Platte River, and that was underpinned by an even more inexhaustible source, the Ogallala Aquifer.

I have been telling these people for some time now that in North Texas for example cotton farmers have 'mined' the Ogallala Aquifer down to the point where the energy required to bring water to the surface now costs more than the incremental revenue that can be made from irrigating the crop. And how can the Platte be considered an essentially infinite source when Lincoln pumps daily during the summer an amount comparable to 100% of the stream flow past the Ashland well fields.

As we are considering the 'no fees' addition of several thousand new lawns a year irrigated with drinking water, lets consider several other factors not subject to expedient compromise.

- The City of Omaha apparently does not think that being on the Missouri River makes it the beneficiary of infinite drinking water supplies either. In fact they are proposing to build a new large well field facility on the Platte, competing with Lincoln's Ashland Well Field for EPA and endangered species limited total water budget. Why would Omaha want to

do that, when they are right next to what some propose as a fall back option for water supplies in the future of Lincoln? Could it be that waste discharge into the Missouri impacts the cost of its use as drinking water? Could it be that one significant radiation spill at a nuclear power facility upstream could leave the City of Omaha not only temporarily with no source of water, but possibly with a permanently unusable City Water system if it became significantly contaminated with radioactive material from the spill?

- How about upstream from us. Do we expect Freemont, Columbus, Grand Island, North Platte, Ogallala, Scottsbluff, Sterling, Brush, Fort Morgan, or Denver and the exploding 'Front Range' to stand still in their consumption of water that annually recharges the aquifer around the Ashland Well fields?
- Has anyone in Lincoln factored in the impact of denuding of forestation over essentially the entire mountain source watershed of the South Platte River in this summer's fires? What will happen is that water retention by the forest cover will be gone for most of the next decade. With nothing to detain the runoff from there to Lincoln, we will have lots of flow when we don't need it, and it will have all gone down the Missouri to the Gulf of Mexico when we do.

Bottom line: Charging fringe developers, ten miles out, the true incremental system cost for water, sewer, electric power, roads, police, fire, ambulance, schools etc., is actually being damnably generous when the reality is that drinking water put on their golf courses and lawns may leave century old homes at the core of Lincoln taking showers on alternate days.

A Bemused Observer,

Ed Patterson



## Business & Real Estate Developers

John L. Hoppe Jr. President

September 18, 2002

Mr. Greg Schwinn  
Chairman  
CITY COUNTY PLANNING COMMISSION  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508

RE: Impact Fee Ordinance Dated August 26, 2002

Dear Sir,

I am pleased that Lincoln is addressing the need to get caught up on our infrastructure but I don't feel "impact fees" are the way to solve the problem. We've built Lincoln's infrastructure in the past using community funds and I don't believe there is a need to tax a certain portion of the population to solve a Lincoln problem that has been created over many years. Perhaps "impact fees" will be a part of the total solution but I would hope that you would table the proposed ordinance until that total solution is formulated.

Several of the reasons I'm opposed to "impact fees" include:

1. They will divide the community between the old and new areas.
2. The ordinance exempts certain areas that should be included in a comprehensive plan.
3. The ordinance simply shifts the burden from the developers to the builders and end homeowners. These homeowners are being taxed without representation.
4. The fees will do little in the short run to solve the problem because of the exemptions.
5. The fees are an uncontrolled tax levy that can be increased or decreased by future administrations without citizen oversight.
6. Growth pays for itself and this tax on growth will be very harmful to Lincoln's economy.

If in fact we need an ordinance on "impact fees" we should at least make it retroactive and have everyone help catch up on our past deficiencies. Perhaps all homeowners with homes between one and 20 years could pay 80% of the \$2,500.00 fee, homeowners with homes between 20 and 40 years could pay 60% of the fee and homeowners with homes older than 40 years could pay 40% of the fee. Businesses could pay \$0.50 per square foot of space. These fees could be paid

P.O. Box 6035 • Lincoln, NE 68506  
402-437-9200 • Fax 402-441-4081





Page Two, September 18, 2002, Impact Fee Ordinance Dated August 26, 2002

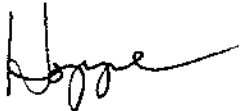
over 5 years and this would give us instant cash to start getting caught up. Everyone would have a "buy in" and the future fees would keep us up to date.

As a member of the Home Builders Association of Lincoln, Lincoln Realtors Association, and LIBA we are opposed to this ordinance as written. We feel that a comprehensive plan is needed to solve Lincoln's infrastructure problems. As a member of the Country Club Neighborhood Association I was never asked my feelings about "impact fees" before they joined the Fair Share Alliance but I don't feel we should support that group's stance on "impact fees".

**I'm opposed to "impact fees". Please consider all options but vote to table this Ordinance until a total solution is developed.**

Thank you for your consideration of this matter and all you do for the City of Lincoln.

Sincerely,



John L. Hoppe, Jr.  
Chairman

Copy: W. Cecil Steward  
Tommy Taylor  
Gerry Krieser  
Patte Newman  
Mary F. Strand  
Steve Duvall  
Jon Carlson  
Roger Larson  
Mayor Don Wesely

WARD F. HOPPE  
SHANNON R. HARNER  
SCOTT M. VOGT



HOPPE & HARNER  
HOPPE & HARNER, L.L.P.

ATTORNEYS AT LAW  
P.O. Box 6036  
LINCOLN, NEBRASKA 68506-6036  
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September 18, 2002

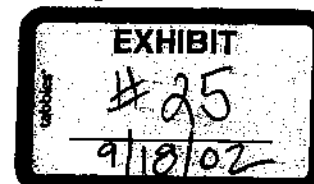
Greg Schwinn, Chairman  
Lancaster County Planning Commission  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68502

Dear Chairman Schwinn and the Members of the Planning Commission:

I am an attorney and builder of affordable housing in Lincoln, Nebraska.

I oppose the imposition of impact fees for the following reasons:

1. Impact fees are illegal.
  - A. Fees for the improvements of general benefit to all citizens of the City must be assessed against the general population.
  - B. To be lawful, fees must have a nexus to the lot created. The *BRIAR WEST, INC. v. CITY OF LINCOLN*, 206 Neb. 172, 291 N.W.2d 730 (1980) ( which incidently is my family) maintained that you cannot levy a fee on development without a special benefit.
  - C. Impact fees by their nature are not "special benefit".
2. I believe that impact fees will harm the economy. Construction, particularly home construction, has been leading the economy in Lincoln for a period of time. The imposition of impact fees will curtail construction and new development in Lincoln. This is particularly true of commercial activity.
3. The cost for commercial impact fees is improperly placed. Sales tax generated by new commercial construction offsets any impact it may have. For instance, South Pointe, has generated millions in new sales, sales tax from which goes to the city general fund.
4. Impact fees provide a windfall to old neighborhoods. Impact fees




assessing new development should not be used to free up money to maintain old neighborhoods. All neighborhoods should be treated equally.

5. The fees are divisive and arbitrary.
6. The impact fees discriminate against affordable housing. The fees create a 2.5% tax on the houses I build and that will go up to 4.5%. Clearly this unfairly hits the working poor because they ultimately pay the fee in increased housing cost.
7. There are other reasons but the forgoing is sufficient.

Please vote against impact fees.

I am not opposed to fees equal and in proportion to the special benefit conferred. Thus, a connection fee for a sewer line would be acceptable in my book as would a connection fee to a sewer main. However, there is no question in my mind that the over sizing of Street benefits the entire town and the entire town should pay.

Sincerely,

  
Ward F. Hoppe